TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]220

GEORGE W. COOK, PLAINTIFF IN ERROR,

vs.

[redacted]EN L. TAIT, UNITED STATES COLLECTOR OF INTER-[redacted]AL REVENUE FOR THE DISTRICT OF MARYLAND.

[redacted]RROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED FEBRUARY 15, 1923.

(29,403)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 853.

GEORGE W. COOK, PLAINTIFF IN ERROR,

vs.

GALEN L. TAIT, UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 11, 1923.

1 TRANSCRIPT OF RECORD.

Caption.

UNITED STATES OF AMERICA,
District of Maryland, To wit:

At a District Court of the United States for the District of Maryland Begun and Held in the City of Baltimore on the First Tuesday in December (Being the Fifth Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Twenty-two.

Present: The Honorable John C. Rose, Judge, Maryland District; Amos W. W. Woodcock, Esq., Attorney; William W. Stockham, Esq., Marshal; Arthur L. Spamer, Clerk.

Among other were the following proceedings, to-wit:

No. 1293, Law Docket.

GEORGE W. COOK

vs.

GALEN L. TAIT, United States Collector of Internal Revenue for the District of Maryland.

Declaration Filed 10" May, 1922.

UNITED STATES OF AMERICA,
District of Maryland, s:

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

[Title omitted.]

2 **Declaration.**

George W. Cook complains of Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, of a plea of trespass on the case upon promises, filing his declaration and rule to plead as commencement of suit, pursuant to law and the rules of this court in such case made and provided:

For that, whereas the plaintiff is and at all times mentioned in this declaration was a citizen of the United States of America, the

plaintiff now says that he was born in said United States, and that, though plaintiff has long since to-wit, in the year 1890 moved to a foreign country to-wit, the Republic of Mexico, and established a domicile there, the plaintiff has never been naturalized in or taken an oath of allegiance to that or any other foreign country, but has been at all times and now still is a citizen of the United States, as aforesaid, but resident and domiciled in the City of Mexico, Republic of Mexico, aforesaid.

And plaintiff saith that the defendant, Galen L. Taft, on the 13th day of March, 1922, was, thence hitherto has been, and now still is a citizen of the State of Maryland, a resident of the City of Baltimore, in said District of Maryland, and is now Collector of Internal Revenue of the United States of America for said Collection District of Maryland.

I.

The plaintiff for his cause of action against said defendant as United States Collector of Internal Revenue at Baltimore, Maryland, aforesaid, saith that on and prior to the 13th day of March, A. D., 1922, said defendant as Collector aforesaid did make demand upon the plaintiff that he file a return of his income for purposes of taxation under the Revenue Laws of the United States and requiring the said plaintiff to make payment of the amount of his said income tax as shown by said return or as the same might be otherwise assessed against the plaintiff or as he might be required to pay the same under said Revenue Laws and the Rules and Regulations which theretofore had been or thereafter might be adopted and promulgated by the said United States.

3 And the said defendant as such Collector of Internal Revenue did then and there and at all times threaten the said plaintiff with the pains and penalties provided by said Revenue Laws unless and until the plaintiff did comply in all things in manner and form provided by the said Revenue laws with the said demands by said defendant as Collector; and did threaten the plaintiff with distraint of his goods, chattels and effects, including stocks, securities, and evidences of debt, and other property and rights of property, in order to enforce the payment of said income tax of the plaintiff. And said defendant as Collector aforesaid did further threaten to collect such income taxes from the plaintiff by filing a lien for the said taxes and penalties thereon upon the real estate of the plaintiff, unless payment was made immediately upon demand, and to file a bill in equity in a District Court of the United States to enforce such lien of the United States upon any real estate belonging to the plaintiff. And said defendant as such collector did threaten to collect such taxes by seizure and sale of the real estate belonging to the plaintiff.

The plaintiff further saith that plaintiff was thus under duress of the said demands and threats of the said defendant as Collector; and was under fear of the pains and penalties of said Revenue Laws of the United States, not herein specifically enumerated or described; and

being so under duress and fear, this plaintiff filed (under protest) a form of a return, but denying then and there and protesting against, the power and right of the United States to demand, receive, assess or collect from him, this plaintiff, a citizen of the United States, resident and domiciled in the Republic of Mexico, income taxes derived entirely from real and personal property which was at all times within the territory of the Republic of Mexico and outside the territorial limits of the United States of America, and at no time within the protection or power of collection by the United States. And the plaintiff further saith that all of said income set forth in said form of return to said defendant as such Collector of Internal
4 Revenue was in truth and in fact derived entirely from real and personal property located in the Republic of Mexico to-wit in foreign territory over which the defendant officially, and the United States *has* no jurisdiction to protect or collect said income taxes.

Copies of the said form of return and accompanying papers thereto attached are herewith filed and made a part hereof as if fully set forth herein, and are marked, respectively, Exhibits A, B, C, D, E, F, and G. That is to say: A is a "Form 1040 A., U. S. Internal Revenue," partly filled out, signed by George W. Cook, and sworn to before the United States Consul at Mexico City, Mexico; to which are attached two typewritten pages as part of said form of return, marked B and C, each signed by George W. Cook, containing the statement in words and figures of the return of the plaintiff; D is a printed form of protest, signed by George W. Cook; E is a power of attorney at law and in fact from George W. Cook to Charles Claflin Allen, duly acknowledged before the United States Consul at Mexico City, Mexico; F. is a communication from plaintiff, by his said Attorney, containing additional statements of fact and addressed to Hon. David H. Blair, Commissioner, and verified by affidavit; G is a communication from plaintiff by his said Attorney to the Defendant, Galen L. Tait, as Collector of Internal Revenue at Baltimore, filing (under protest) the form of the return, and paying (under protest) the amount of the first installment of the amount of the tax assessed, to wit Two Hundred and ninety-eight and 34/100 Dollars ($298.34) being one-fourth of the amount of the total tax, to wit, ($1,193.38).

Plaintiff saith that the form of the said return thus filed under protest was duly accepted by the Collector of Internal Revenue at Baltimore, Maryland, and also by the Commissioner of Internal Revenue and the amount of said tax was duly considered and treated and held by said Commissioner as being assessed at the sum of $1,193.38.

And the first installment of said tax, to wit, the sum of Two hundred and Ninety-eight and 34/100 Dollars ($298.34) was thereupon on said 13th day of March paid (under protest) to said defendant
5 Collector as aforesaid, and was received as being paid under protest, in the several forms in this declaration and in said exhibits A to G, both inclusive set forth.

And thereupon and on the 14th day of March, 1922, the plaintiff, through his said attorney at law and in fact, Charles Claflin Allen,

duly filed his claim for a refund on form "843, Treasury Department Internal Revenue Service," which is the form prescribed for such a claim by the Revenue Statutes of the United States, and the Rules and Regulations thereunder. Which said claim for refund is herewith filed as exhibit H and is in words and figures as follows, to wit:

Exhibit H to Declaration.

H.

Treasury Department, Internal Revenue Service.

Form 843—Jan., 1922.

Comptroller General U. S., January 18, 1922.

(Copy.)

Claim for

Abatement of Tax Assessed.

Credit Against Outstanding Assessments.

X Refund of Taxes Illegally Collected.

Refund of Amounts Paid for Stamps Used in Error or Excess.

Important.—File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

Date received by Administrative Unit: Stamp here: ——.

Notice to Collector:—Collector must indicate in block above the kind of claim, except in Income Tax cases.

Collector's Notation.—District, ——. Account number, ——. Date received, Stamp here: ——. —— ——, Collector of Internal Revenue.

DISTRICT OF COLUMBIA, *ss:*

Type or print: George W. Cook (Name of taxpayer or purchaser of stamps), 2*a* de Madrid, No. 35 (Residence—give street and number as well as city or town and State), Mexico City, Republic of Mexico (Business address).

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged Real Estate.

2. Character of assessment or tax (State for or upon what the tax was assessed or the stamps affixed.) Income from real and personal property in Mexico. Period, Year, 1921; Income Taxes, Calendar Year, 1921.

3. Amount of assessment or stamps purchased Total assessment $1,193.38, 1st installment paid, $298.34.

4. Reduction of Tax Liability requested (Income and Profits Tax, $——.

5. Amount to be abated Total amount of Tax, if paid, $1,193.38, 1st installment paid $298.34.

6. Amount to be refunded (or such greater amount as is legally refundable) Total tax, now 1st installment $298.34.

7. Dates of payment (see Collector's receipts or indorsements of canceled checks) March 13, 1922 (under protest). (If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed Baltimore, Maryland (under protest).

9. District in which unpaid assessment appears Baltimore, Maryland (under protest).

10. Amount of overpayment claimed as credit Total amount of tax $1,193.38—¼ paid $298.34.

11. Unpaid assessment against which credit is asked; period from ¾ from June, 1922 to March, 1923 $895.04.

Total tax $1,193.38.

Deponent verily believes that this application should be allowed for the following reasons:

Briefly, this claim for refund is made because of want of power in the United States to assess, levy, demand, receive or collect from this protestant, an American Citizen, resident and domiciled in the Republic of Mexico, income derived from real or personal property in said Republic of Mexico; and, more fully, for the same reasons set out in the printed form of protest signed by George W. Cook, and attached to the form of return herein; also for the same reasons set out in the communication to the Commissioner of Internal Revenue, dated March 13, 1922, and signed George W. Cook, by Chas. Claflin Allen, his Attorney at law and in fact; also the same reasons contained in the letter from said Cook, by his said Attorney, to the Collector of Internal Revenue, Baltimore, Maryland, dated March 13, 1922; both of which letters, together with said printed protest, are now made part hereof for more certain definition.

(Attach additional sheets if necessary.)

(Signed:) Chas. Claflin Allen (Address: 1110 Boatman's Bank Bldg., St. Louis, Mo.)

Sworn to and subscribed before me this 14th day of March, 1922.
8. Duncan Bradley, Notary Public, D. C. (Title). (Notarial Seal.)

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

6 Thereupon the said claim for refund (Exhibit H) was duly presented to the Commissioner of Internal Revenue, and was duly considered and the said claim for refund was rejected and denied, and the following communication was addressed on said same day, March 14th, 1922, to George W. Cook, the plaintiff, which judgment of rejection of said claim is herewith filed, marked Exhibit I, and is in words and figures as follows, to wit:

Exhibit I to Declaration.

Treasury Department,

Washington.

Office of Commissioner of Internal Revenue.

Address reply to Commissioner of Internal Revenue and refer to —.

March 14, 1921.

Mr. George W. Cook, 2*a* de Madrid No. 35, Mexico City, Mexico.

SIR:

Consideration has been given to your claim for the refund of $298.34 which consists of the first installment of income tax due upon your return for the calendar year 1921. This amount was paid under protest to the Collector at Baltimore under date of March 13, 1922.

The basis of your claim is that there is want of power in the United States to asses-, levy, demand, receive or collect from you, an American citizen, resident and domiciled in the Republic of Mexico, income derived from real or personal property in said Republic, and also for reasons set out in a printed form of protest signed by you and attached to your return, etc.

Your claim for refund, based as it is upon a contention that the United States has not authority to collect an income tax in respect of income received from real estate owned by an American citizen resident in a foreign country, is hereby rejected.

Yours very truly, (Signed) D. H. Blair, Commissioner. (Seal.)

7 And the plaintiff saith that at the time of the rejection of said claim for refund in manner set forth in the communication by said Commissioner, dated March 14, 1922, it was understood between the plaintiff and said Commissioner that said finding and rejection was to be taken as a final ruling on said claim for a refund of said first installment of income taxes for the calendar year 1921 in lieu of any appeal and as fully as if made upon an appeal, and

was to be considered as a basis for the bringing of this suit for the recovery of said amount of the first installment of income taxes as aforesaid. And said rejection was in law and in fact a final rejection of said claim. And the plaintiff now saith that the said demand and assessment of income taxes on the plaintiff, and the threatened penalties, interest, distraint, lien and seizure and sale of property in manner and form as provided by the said Revenue laws and the Regulations thereunder as above set forth are beyond the authority and power of the United States under the Constitution of the United States, and under any treaty rights between the United States of America and the Republic of Mexico, and are contrary to the usage, customs and accepted rules and principles of International law, for the following reasons:

First. Because the property from which said income is directly and entirely derived is real or personal property which was at all times outside the territorial jurisdiction of the United States of America, and is solely within the territorial limits and governmental jurisdiction of the Republic of Mexico, and is not within the protection or power of collection by the United States.

Second. That taxes on said income are "direct taxes" insofar as they are, or are to be, assessed and imposed upon real estate or the rents or income of real estate, which is located in the Republic of Mexico and outside of the territorial area and jurisdiction of the United States of America and are subject to the taxing power of a government foreign to the said United States, and are not subject to the taxing power of the said United States, and are not sub-
8 ject to the taxing power of the Congress under the Constitution of the United States.

Third. That taxes on said income are "direct taxes" insofar as they are, or are to be, assessed and imposed on personal property, or the income of personal property, which is located in the Republic of Mexico and is outside of the territorial area and jurisdiction of the United States of America, and are subject to the taxing power of a government foreign to the United States, and are not subject to the taxing power of the United States.

Fourth. That the United States of America is without power to assess, impose and collect any taxes on the income or property mentioned in said return; and that the Revenue Acts of 1913, 1916, 1917, 1918 and 1921 and the Rules and Regulations adopted thereunder are, so far as relates to taxation upon income so derived as aforesaid, wholly unconstitutional and void.

Fifth. That the enforcement of the pains and penalties of said Revenue Laws and Regulations, now threatened against the plaintiff as herein stated would violate the provisions of Article V of the Amendments to the Constitution of the United States, which provides: "Nor shall any person * * * be deprived of life, liberty, or property without due process of law."

Sixth. The said statutes known as the Income Tax Acts are all and singular void, so far as relates to the person and property of the plaintiff herein, because in derogation of the natural and inherent

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To the defendant, Galen L. Tait, Collector of Internal Revenue for the District of Maryland:

Take notice: In accordance with the rules of the District Court of the United States for the District of Maryland, you will be required to plead to the declaration in this action before the next succeeding return day to that to which you may be summoned or else judgment by default will be entered against you. Chas. Claflin Allen, Chas. Claflin Allen, Jr., Attorneys for Plaintiff. Frederick N. Watriss, Of Counsel.

(Here follows Exhibit A to Declaration, marked page 11.)

Exhibit "B" to Declaration.

George W. Cook, 2a Calle de Madrid, City of Mexico.

Statement for Income Tax Return for the Year 1921.

		U. S. money.	U. S. money.
Income taken from Cash Book:			
Rentals collected	138,848.69		
Interest collected	3,551.79		
From Various Sources	602.72		
			143,003.20
Income taken from Ledger, etc.:			
Interest from various sources			7,517.24
Deductions taken from Cash Book:			
Interest refunded	52.33		
Real Estate expenses, covering taxes, repairs, service, etc.	36,126.49		
General Expense, covering Office expense, administration, salaries, legal and notarial fees, stationery, postage, etc.	15,204.69		
Interest paid on notes and loans	587.50		
Contribution to Charitable Institutions	611.50		
		52,582.51	
Deductions, taken from Ledger, etc.:			
Real Estate expense, materials for repairs	3,123.48		
Losses on sales of Real Estate	24,012.50		

Losses on liquidations of Mortgages	31,339.52		
Interest paid on notes and loans	2,582.39		
Loss on Guadalajara Building, excess of expense over income	1,932.54		
Taxes paid on Real Estate	2,199.64		
Deterioration of 2% on buildings of a construction value of $777,906.15	15,558.12		
		80,748.39	
Net income to balance		17,189.54	
		150,520.44	150,520.44
Total Net Income	$17,189.54		
Credit as Married Man	2,000.00		
Taxable Income	$15,189.54		

Income tax paid by me to the Mexican Government: $355.05. George W. Cook.

13 **Exhibit "C" to Declaration.**

G. W. C., Page 2.

Computation of Tax:

Normal Tax:	4% on $4,000.00	$160.00
	8% on 11,189.54	895.16
Surtax	on 17,189.54	493.27
Total tax		$1,548.43
Deduct Income Tax paid to the Mexican Government		355.05
Net tax		$1,193.38
First Installment of One-fourth		$298.34

Mexico City, Republic of Mexico, March 4, 1922. George W. Cook.

14 **Exhibit "D" to Declaration.**

Copy of Printed Form of Protest Exhibit "D."

Paste this on the return for U. S. income taxes.

(Form of protest against assessment and payment of Income Taxes to the United States by American Citizens resident and domiciled in Mexico. Issued by the American Chamber of Commerce of Mexico, on the advice of Charles Claflin Allen, of St. Louis, Missouri, Special Counsel.)

To the Collector of Internal Revenue of the United States at Baltimore, Maryland.

SIR:

In filing herewith the form hereto attached, provided by the Statutes of the United States and the regulations thereunder for the returns as for income taxes, I do so not as a voluntary return of income for purposes of taxation, but only as evidence that I, as a citizen of the United States, resident in the Republic of Mexico, protest the power of the United States through Income Tax laws passed by Congress in the years from 1913 to 1921, both inclusive (or otherwise) to assess, demand, collect, or enforce the collection by distraint, levy or otherwise of a tax on any of the income or property in said form of return contained, for the reason that said income and the property or other source from which it was derived were at all times outside the territorial jurisdiction of the United States of America, and within the territory of the United States, of Mexico, and are not within the proptection or power of collection by the United States.

I further protest the assessment and collection of income taxes based upon said return or otherwise, for the following reasons:

I. That I am an American Citizen, but resident and domiciled outside of the United States of America, to wit, a resident and domiciled in the United States of Mexico.

15 II. That taxes on said income are "direct taxes" insofar as they are, or are to be, assessed and imposed upon real estate or the rents or income of real estate, which is located in the Republic of Mexico and outside of the territorial area and jurisdiction of the United States of America and are subject to the taxing power of a government foreign to the said United States, and are not subject to the taxing power of the said United States, and are not subject to the taxing power of the Congress under the Constitution of the United States.

III. That taxes on said income are "direct taxes" insofar as they are, or are to be, assessed and imposed on personal property, or the income of personal property, which is located in the Republic of Mexico and is outside of the territorial area and jurisdiction of the United States of America, and are subject to the taxing power of a government foreign to the said United States, and are not subject to the taxing power of the United States.

IV. That taxes on said income insofar as they are, or are to be, assessed and imposed upon the income from real or personal property as aforesaid; and also insofar as imposed upon the income from any business, trade, or profession, or upon wages for services carried on or performed by a Citizen of the United States who is carrying on his business, trade, or profession for profit, or performing services for wages, within the Republic of Mexico, are taxes attempted to be imposed on real or personal property, or on a business, trade or profession, or on services performed outside the territorial area and jurisdiction of the United States of America; and such assessment and imposition of taxes on such income is beyond the power of the United States under the Constitution, United States of America.

V. That the United States of America is without power to assess, impose and collect any taxes on the income or property mentioned in said return; and that the Revenue Acts of 1913, 1916, 1917, 1918 and 1921 and the Rules and Regulations adopted thereunder are, so far as relates to taxation upon my income so derived as aforesaid, wholly unconstitutional and void.

16 The undersigned respectfully states that he thus makes protest against the assessment and collection of income taxes based upon this return or otherwise in order to give notice that he intends to file his claim for refund or any such tax assessed or collected hereunder and if the refund is denied, that he intends to sue to recover any such tax. George W. Cook.

17 **Exhibit "E" to Declaration.**

(Copy.)

Know all men by these presents, that I, George W. Cook, a native and a citizen of the United States of America, for many years past a resident and domiciled in the City of Mexico, Republic of Mexico, have made, and by these presents, do hereby make, constitute, and appoint, Charles Claflin Allen, a lawyer resident and domiciled in the City of St. Louis, State of Missouri, United States of America, and a member of the Bar of the Supreme Court of the United States, my true and lawful attorney at law and in fact, and as my agent in connection with any and all claims made by the United States of American through its legislative, executive or judicial departments of Government relating to taxes for income derived by me from property, real or personal, owned or operated within the territory of the Republic of Mexico, or claims for income derived by me from any business, trade or profession or upon wages for services carried on or performed by me and derived by me within the territorial limits of said Republic of Mexico; and my said attorney at law and in fact has full power and authority in my name and on my behalf to appear before any executive, legislative, judicial or administrative officer on my behalf, and especially to appear before the Commissioner of Internal Revenue of the United States of American and to carry on and transact with said Commissioner, and with any of his assistant- or subordinates or persons to whom he may cause my said attorney to be referred, any and all matters and things relating to any such claim or claims by the Government against me for income taxes, and my said attorney shall have full power to carry on and transact with the collector of Internal Revenue of the United States any matters and things relating to the duties of the office of said Collector in connection with my affairs in this behalf.

And my said attorney at law, in fact and as an agent for me is hereby fully authorized and empowered to prepare and
18 execute in my name and on my behalf, and to sign my name to any papers, documents, official forms including any and all protests, claims for refund and other objections to the power of the United States Government to assess any taxes against me by reason of any income derived as above set forth which may be required by any officer of the United States Government, and more especially by the said Commissioner of Internal Revenue, and any paper or document officially required by statute or regulation or otherwise, in connection with the doing of any such matters. And the said Charles Claflin Allen, as my attorney at law and in fact as aforesaid shall have full power and authority which is hereby specifically conferred, to institute in any Court of the United States, or in any department of the Government of the United States, a suit or proceeding of such kind or kinds and in such form or forms as to my said attorney may seem best for the purpose of contesting the right, and power of the United States of America by Act of Congress or otherwise to

assess, demand, collect or receive, from me any sum or sums of money as taxes by reason of income derived by me and paid to me within the territorial limits of the Republic of Mexico; in the doing of any and all of the foregoing matters and especially in the transaction of business with the Department of the Commissioner of Internal Revenue my said attorney shall have fully power in his discretion to make, alter, modify and amend any and all forms of procedure including the form for tax returns required by statutes and regulations, whether I have previously executed any such form of paper including the form for return for income tax or not.

And the said Charles Claflin Allen as my said attorney at law, and in fact and as agent aforesaid shall have and possess all the power and authority necessary to prepare for the transaction of the business aforesaid looking to the establishment, prosecution and determination of litigation or legislation concerning the taxation of incomes which do or may affect my income from the sources and
19 under the conditions above referred to, to wit, those derived or to be derived within the territorial limits of the Republic of Mexico; with full power of substitution and revocation by my said attorney.

In witness whereof, I have hereunto set my hand and seal at the City of Mexico, in the Republic of Mexico on this 4th day of March, 1922. (Signed) George W. Cook.

UNITED STATES OF MEXICO,
County of ——, *ss:*

George W. Cook, being duly sworn on his oath states that he is a native of the State of New York, United States of America, and for many years, to wit, more than thirty years last past has been a resident of the City of Mexico, Republic of Mexico and is now resident and domiciled in said City and Republic of Mexico. That the matters and things set forth in the foregoing power of attorney to Charles Claflin Allen, are true. And the said George W. Cook having personally appeared before me and who is known to me to be the person described in and who executed the foregoing instrument acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal in the said City of Mexico on this 4th day of March, 1922. (Signed) W. M. Parker Mitchell, Consul of the United States of America at Mexico City, Mexico. (Seal.) Service No. 371. No fee prescribed.

20

Exhibit "F" to Declaration.

March 13, 1922.

To the Honorable David H. Blair, Commissioner of Internal Revenue, Washington, D. C.

SIR:

As Attorney at Law and in fact for George W. Cook, an American Citizen, resident and domiciled at 2*a* de Madrid, No. 35, in the City

of Mexico, Republic of Mexico and acting under the power of attorney hereto attached, I am filing herewith on behalf of said George W. Cook, a form of a return for income taxes, (but only under protest as set forth in the printed paper signed by said George W. Cook and hereto attached), which form of return has been made out because of the demands by officials of the Treasury Department of the United States that said Cook make out such a return and pay the tax thereon as provided by the Revenue Laws of the United States.

In supplement of the statements made on said form of return, duly sworn to by said George W. Cook before the Consul of the United States at Mexico, Mexico, on the 4th day of March, 1922 and herewith filed, I state that all income in said form of return described or referred to was in fact derived entirely from real or personal property in the Republic of Mexico, as is implied by the form of return so executed by said George W. Cook, as aforesaid.

And the said George W. Cook, in filing said form of return under protest, now also pays the amount of the first instalment of said tax demanded of him to wit; the sum of Two Hundred and ninety-eight and 34/100 Dollars ($298.34) under protest that the said tax, so imposed upon him and which he is now compelled to pay or suffer penalties which are now threatened to be imposed, and to suffer other forms of duress and constraint of liberty and property, for the non-payment of said tax, is beyond the power of Congress to provide by law, and the penalties and other acts now threatened against him are contrary to the Constitution of the United States, and are wholly beyond the power of the United States.

And this protest is made for the reasons, among others, that the tax so sought to be involuntarily imposed upon, and which is now collected from said George W. Cook, is a direct tax upon real and personal property outside the territory of the United States, and in a foreign territory, to wit: the Republic of Mexico, over which the United States has no control either by the Constitution of the United States or by treaty rights, and such tax is not within the protection or the power of lawful collection by the United States.

And the said George W. Cook now paying under protest the said sum, so unjustly claimed and demanded of him, now asks for a refund of said sum, and offers to file a claim for refund in the usual form under the Regulations, to the end that he may be repaid the same by the Collector and, if such refund be denied, that he may file a suit or suits to recover said sum so as aforesaid illegally required to be paid. George W. Cook, by Chas. Claflin Allen, His Attorney at Law and in Fact.

21 DISTRICT OF COLUMBIA, *ss:*

Chas. Claflin Allen, being duly sworn, on his oath states that he is the person named in the power of attorney attached to the form of the return filed by George W. Cook, an American Citizen resident and domiciled at 2a de Madrid, No. 35, City of Mexico, Mexico, that he is familiar with the foregoing paper, and that the matters and things therein contained are true as affiant verily believes. Chas. Claflin Allen.

Subscribed and sworn to before me this 13th day of March, 1922. S. Duncan Bradley, Notary Public, D. C. (Notarial Seal.)

22 **Exhibit "G" to Declaration.**

March 13, 1922.

Hon. Galen L. Tait, Collector of Internal Revenue, Baltimore, Maryland.

SIR:

Herewith I am filing (under protest set out in the papers hereto attached) a form of return required by the Commissioner of Internal Revenue, and paying to you herewith by check (but under protest as shown in the communication herewith to said Commissioner) the sum of Two Hundred and Ninety-eight and 34/100 Dollars ($298.34) as the first instalment of the amount of tax which is due if said tax were lawfully assessed against me.

In pursuance of the attached communication and protest to the Commissioner of Internal Revenue of this date, and of the protest hereby to you, I now claim a refund of said first instalment of $298.34 now paid, and shall claim a refund of any and all sums by way of instalments or otherwise which I may be required hereafter to pay by way of income taxes in Mexico. And I also request a receipt for said payment of $298.34, in form provided by the Revenue Laws of the United States and the Regulations thereunder, and I further request the necessary form or forms of claim for refund herein, to the end that I may in all things preserve my right to contest the power and authority of the United States to assess, levy, claim, demand, or collect the said tax. Respectfully, George W. Cook, by Chas. Claflin Allen, Attorney at Law and in Fact.

23 **Writ of Summons.**

[Issued May 11th, 1922.]

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to the Marshal for the Maryland District, Greeting:

We command you that you summon Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland if he be found in your district, to appear before the Judge of the District Court of the United States for the District of Maryland, at the United States Court Room in the City of Baltimore, on the first Tuesday of June next to answer unto the action of George W. Cook and how you shall execute this precept you make known to us in our District Court for the District aforesaid, and have you then and there this writ.

Witness the Honorable John C. Rose, Judge of our said District Court, this 11th day of May in the year of our Lord one thousand nine hundred and twenty-two.

Issued 11th day of May, 1922. Arthur L. Spamer, Clerk. (Seal.)

(Marshal's Return to Foregoing Writ.)

Summoned Galen L. Tait, United States Collector of Internal Revenue for the Dist. of Maryland, personally, and copy of Writ, and copy of Declaration, & Notice, left with him this 12th day of May, 1922. Wm. W. Stochkam, United States Marshal, by Albert E. Taylor, Deputy.

24 In the District Court of the United States of the District of Maryland.

No. 1293, Dkt. Law.

[Title omitted.]

Order of Appearance.

[Filed 20th May, 1922.]

Mr. CLERK:

Enter my appearance as Attorney for the defendant in the above entitled case. Robert R. Carman, U. S. Attorney.

25 In the District Court of the United States for the District of Maryland.

[Title omitted.]

Defendant's Demurrer to Declaration.

[Filed 29th May, 1922.]

The defendant, by Robert R. Carman, United States Attorney, demurs to the declaration herein filed, and for cause of demurrer says:

1. That it appears from the declaration that the monies therein claimed were lawfully collected from the plaintiff by the defendant as taxes due the United States of America in accordance with the laws of the United States of America in such cases made and provided.

2. That the monies sought to be recovered by the plaintiff represent taxes lawfully assessed and due and owing by the plaintiff to the United States of America.

3. That the declaration filed is bad in substance and insufficient in law. Robt. R. Carman, United States Attorney, Attorney for Defendant.

26 In the District Court of the United States for the District of Maryland.

[Title omitted.]

Order Sustaining Defendant's Demurrer.

[Filed 22nd January, 1923.]

Ordered by the District Court of the United States for the District of Maryland, this 22" day of January 1923 that the above demurrer be and the same is hereby sustained. John C. Rose, U. S. Circuit Judge.

27 In the United States District Court for the District of Maryland.

[Title omitted.]

Opinion of the Court.

[Filed 22nd January, 1923.]

Rose, *Circuit Judge:*

The plaintiff is a citizen of the United States who, since 1890, has continuously resided in the Republic of Mexico. His entire incomes comes from real and personal property, having a permanent situs in that country. The defendant called upon him to make a return of his income for taxation. With this demand he complied under protest. A tax was assessed upon him, and at the time suit was instituted, he had paid the first installment of it, amounting to $298.34, to recover which this action is brought, he alleging that the payment was made under duress.

The defendant has demurred to the declaration, and asserts that the single issue presented is whether a tax imposed by Congress on the net income of a non-resident citizen of the United States, when that income is entirely derived from sources within a foreign country, is repugnant to the Constitution of the United States. In other lands, the attempt to impose such a tax has rarely been made. In a report of the British Royal Commission on Income Tax, which forms part of a memorandum on a double taxation, dated January 28, 1921, of the Finance Section of the Provisional Economical and Financial Committee of the League of Nations, (Official Publications of the League E. F. S. 16—A 16, Section 3, Annex 2, Page 10) there is to be found the statement:

"Double Income Tax arises when two countries charge Income Tax on the same source of income. As it is not ordinarily practicable for a State to tax income effectively unless either the source

of the income or the owner of the income is within its borders, it may be said broadly that the possibility of effective taxation exists only when the source of the income, or the residence of the owner is within the State. Although the United States of America
28 charge also the income of a citizen even if he resides abroad, this may be regarded as an exceptional method of taxation, and the results in revenue depend, presumably, in a great measure, on sentiment and patriotism."

An examination of the accessible laws of all leading countries confirms the accuracy of the above quoted statement, and seems to indicate that this country is probably the only one which attempts to tax a non-resident citizen upon income he derives from property permanently located in foreign lands. The Supreme Court has said:

"It may not be doubted * * * speaking in a general sense, that the taxing power, when exerted, is not usually applied to those even albeit they are citizens, who have a permanent domicile or residence outside the country levying the tax. Indeed we think it must be conceded that the levy of such a tax is so beyond the normal and usual exercise of the taxing power as to cause it to be, when exerted, of rare occurrence and in the fullest extent, exceptional. This being true, we must approach the statute with the purpose of ascertaining whether its provisions sanction such rare and exceptional taxation."
United States vs. Goelet, 232 U. S. 293.

Shortly after the beginning of the Civil War, the demand for revenue compelled the Governmen to resort to an income tax. Section 49 of the Act of 1861 (12 Stat. 309) limited the imposition to incomes of persons residing in the United States, or derived, by a resident abroad, from property within this country. Section 16 of the Act of 1864 (13 Stat. 281) assumed to tax the income of every person residing in the United States and of every citizen of the United States, residing abroad, whether that income was derived from sources within or without the United States, and the same purpose has been clearly manifested by every subsequent enactment levying a tax upon incomes, although section 262 of the law now in force (42 Stat. 232) provides that under certain circumstances not existing in the case of the plaintiff, gross income includes only that derived from sources within the United States.

Article 3 of Regulation 62, promulgated by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury under the Revenue Act of 1921, provides:

29 "Citizens of the United States, except those entitled to the benefits of Section 262 * * * wherever resident, are liable to the tax. It makes no difference that they may own no assets within the United States and may receive no income from sources within the United States. Every resident alien individual is liable to the tax, even though his income is wholly from sources outside the United States. Every non-resident alien individual is

liable to the tax on his income from sources within the United States."

And Article 4 of the same regulation declares:

"An individual born in the United States, subject to its jurisdiction, of either citizen or alien parents, who has long since moved to a foreign country and established a domicile there, but who has neither been naturalized in or taken an oath of allegiance to that or any foreign country, is still a citizen of the United States."

There is really no room for question that Congress has sought to tax the plaintiff's income, and has used words apt to accomplish that purpose. Even so, he says it has done a vain thing, for it has no constitutional power to submit him to that burden. With much force and learning he argues that the Sixteenth Amendment did not make taxable anything which could never before have been taxed. Its purpose and effect was merely to exempt a tax upon incomes, no matter whence they came, from the requirement of apportionment among the States.

Evans vs. Gore, 253 U. S., 260.

He asserts that the income here sought to be taxed, arising as it does from real and tangible personal property, having a permanent location, is a direct tax.

Pollock vs. Farmers Loan & Trust Co. 157 U. S., 429.

He then argues that no one has ever contended that Congress could levy a direct tax upon property in a foreign land, and it must be conceded that the idea of doing so does not seem ever to have suggested itself to any one. He relies upon Loughborough vs. Blake, 5 Wheaton, 317, (18 U. S., 146) where it was said that the power to impose a direct tax "extends to all places over which the government extends." The assumption throughout the whole discussion in that case was that the power to tax was co-extensive with our territorial boundaries. In his opinion Marshall held that it
30 reached to them, and quite obviously, he assumed that it did not go farther.

The plaintiff contends that one State of our Union may not levy a tax upon real or tangible property, having a permanent location in another, even when the owner is one of its resident citizens. A Kentucky corporation owned many freight cars, which it hired out. Most of them were habitually used in other States. Nevertheless Kentucky attempted to tax them all. When the case reached the Supreme Court, Mr. Justice Brown speaking for it said:

"We know of no case where a legislature has assumed to impose a tax upon land within the jurisdiction of another State, much less where such action has been defended by any Court. It is said by this Court in the Foreign-held Bond case, 15 Wallace, 300, 319, that no adjudication should be necessary to establish so obvious a propo-

sition as that property lying beyond the jurisdiction of a State is not a subject upon which her taxing power can be legitimately exercised. The argument against the taxability of land within the jurisdiction of another State applies with equal cogency to tangible personal property beyond the jurisdiction."

It was held that the tax was an attempt by the State to take property without due process of law, in contravention of the Fourteenth Amendment.

Union Transit Co. vs. Kntucky, 199 U. S. 194.

The Fifth Amendment imposes a like limitation upon the powers of Congress.

Upon the assumption that an income tax is a direct tax, and is levied upon property outside the United States, the plaintiff's reasoning is clear and simple. It is true that if sound, it carries us further than is necessary for a decision of this case, for apparently it would deny the right to tax so much of the income of a resident as comes from property located in foreign lands. One adverse criticism upon it is that it is clearly established that since the adoption of the Sixteenth Amendment, an income tax is never a direct tax. The effect of that change in the Constitution was to take a tax upon income derived from sources which had theretofore made it a direct tax out of that category, and put it in the class of excises, duties and imposts.

31 Brushaber vs. Union Pacific R. R. Co., 240 U. S. 1-19.
Stanton vs. Baltic Mining Co., id. 103-112.

Moreover, in the case so much relied upon by the plaintiff, namely the Union Transit Company vs. Kentucky, the question of whether a State may validly tax one of its residents upon income from sources outside of its jurisdiction, was expressly reserved, and subsequently was answered in the affirmative.

Maguire vs. Trefry, 253 U. S. 12.

The case last cited dealt with the income received and enjoyed by a citizen of the Commonwealth from intangible personal property, the legal title to which was in a non-resident.

Maguire vs. Tax Commissioner, 230 Mass. 503.

Nevertheless the plaintiff insists that before the ratification of the Sixteenth Amendment, an income tax, as it was clearly not a capitation tax, was either a direct tax, subject to apportionment among the States, or was an excise, which must be uniform throughout the United States.

Brushaber vs. Union Pacific, Supra.

and as already pointed out, the amendment does not make taxable anything which could not have ben previously taxed.

Evans vs. Gore, supra.

Before its adoption he contends that he has demonstrated that Congress could not lay a direct tax upon property in foreign countries, and he asserts that it is equally well settled that its authority to impose duties, imposts and excises was limited to territories of the United States. In U. S. vs. Rice, 4 Wheaton 246, argued by Wirt and Webster, and in which Story delivered the opinion of a unanimous Court, it was held that merchandise brought into Castine, while that port was held in the military power of the British government during the latter part of the War of 1812, was not liable for duties, although it apparently still existed intact when at the end of the conflict, the Americans resumed possession.

32 The overwhelming majority of American citizens are also citizens of some one or the other of the States. The logic, not only of the Union Transit Company vs. Kentucky, supra, but of many other cases as well, and the conclusion of some of the most eminent textwriters, it is argued, negative the power of a State to tax its non-resident citizens upon income derived from property not within its borders, and in the case last specifically referred to, the conclusion was put, in part at least, upon a ground which negatives the existence of an analogous power in the Federal Government. In so contending, it is probable that the existence of certain important practical differences between the relation of a State and of the United States respectively to their non-resident citizens have been lost sight of. One of our American States has little or nothing it can give to one of its citizens who takes up his residence beyond its borders. If he moves to another one of our States, he practically always changes his citizenship at once. There may be rare and exceptional cases in which he does not, but if so, it is always within his power to do it when he will, and it is safe to assume that he would do so when the State of his prior allegiance made an attempt to tax him upon income derived from property located in that in which he is living. When he goes abroad, and takes his property with him, as a practical matter, the power of his State to give him anything in return for his taxes, ceases. He cannot call upon it for anything which he is likely to want and which it can give. It may not maintain diplomatic relations with the country in which he is living. It has neither an army nor a navy to give moral or physical protection to him. On the other hand, he may demand the protection of the United States, and often does. To a somewhat indefinable extent, he is entitled to it. To be in the position to afford it, the Government must maintain diplomatic and consular representatives abroad, and keep up land and sea forces. In easily conceivable cases, the attempt to assert his rights may involve his country in the expenditure of billions of dollars and

33 hundreds of thousand of lives. If he wishes to retain a citizenship which may cost his native land so dearly, it is not altogether unreasonable to require him to contribute to its support. For nearly sixty years Congress has thought that he should. Text-writers of high authority here and abroad have assumed that he may be lawfully called upon to do so. Webster on Citizenship,

163 to 169, and authorities and precedents there cited. More than half a century ago, Hamilton Fish, then Secretary of State, on December 13, 1870, wrote to Mr. MacVeigh, one of our ministers abroad, to the effect that "long continuance, by a citizen of the United States, in failures to make income tax returns, would, as a general rule, justify the refusal of a recognition of his claim to protection. Foreign Relations of U. S., 1871-72, 888.

The Supreme Court itself has said that it did not in the slightest degree question that there was power to impose an excise duty upon a foreign built yacht owned by a citizen, although he was permanently domiciled abroad. U. S. vs. Goelet, supra.

As to the policy of taxing our non-resident citizens upon their foreign located property, minds may differ. It may be said that it scarcely comports with the dignity of the Government to impose a tax, the collection of which it has little power to enforce, and that it is not just to tax a citizen who, because he dwells abroad, ordinarily receives from us little at the same rate which is levied upon those who are in the daily enjoyment of all the benefits the Government bestows. Weightly as these arguments may seem to be, they should be addressed to Congress and not to the Court.

It follows that the demurrer of the defendant to the plaintiff's declaration must be sustained.

34 In the District Court of the United States within and for the District of Maryland.

[Title omitted.]

Stipulation Waiving Jury Trial.

[Filed 3rd February, 1923.]

Stipulation—Waiver of Jury.

It is hereby stipulated and agreed that a jury is waived in the above entitled cause, and that the cause may be submitted on a question of law arising upon the pleadings; that the question of law having been heard and determined on a question involving a construction and application of the Constitution of the United States shall be taken by writ of error to the Supreme Court of the United States direct. Chas. Claflin Allen, Attorney for Plaintiff. A. W. W. Woodcock, U. S. Attorney, for the Defendant.

35 **Order for Judgment.**

[Filed 3rd February, 1923.]

In the District Court of the United States for the District of Maryland.

At Law.

No. 1293.

[Title omitted.]

Order for Judgment.

The plaintiff declining to amend the Declaration or to plead further and electing to stand upon the ruling of the Court on the Demurrer, it is by the Court ordered this 3 day of February, 1923, that the Clerk of the Court enter judgment for the defendant with costs to the defendant. John C. Rose, U. S. Circuit Judge.

35½ In United States District Court.

Judgment.

Whereupon the Court having sustained the defendant's demurrer to the plaintiff's declaration as aforesaid in accordance with its opinion filed herein, and by reason thereof doth say that the defendant doth not owe to the said plaintiff the said sum of $298.34 or any part thereof, in manner and form as the said plaintiff hath above alleged and having directed a judgment to be entered for the defendant with costs to the defendant the same was entered accordingly.

Therefore it is considered by the Court here that the said plaintiff take nothing by his said writ, but that he be in mercy for his false complaint; and that the said defendant go thereof without day, etc.; it is also considered by the Court that the said defendant do recover against the said plaintiff the sum of $10.35 adjudged by the Court here unto the said defendant for his costs and charges by him about his suit in this behalf laid out and expanded; and that the said plaintiff — in mercy and that the said defendant have hereof his execution, etc.

36 **Certificate of Court That Decision Involves Construction of Constitution of United States.**

[Filed 3rd February, 1923.]

In the District Court of the United States for the District of Maryland.

At Law.

No. 1293.

[Title omitted.]

Certificate by the Court That the Decision of the Cause Involved the Construction of the Constitution of the United States.

It is hereby certified by the Court that in the determination of the demurrer to the declaration in the above entitled cause, and in the entering of the judgment for the defendant therein dismissing the declaration of the plaintiff, there was directly called in question the construction and application of the Constitution of the United States and of the powers of The Congress to enact the Statutes called in question, and of the Constitutional authority of the defendant as an officer of the United States under said Statutes to assess, levy and collect the taxes paid by the Plaintiff under protest, and said question was directly passed upon and determined by the Court.

February 3, 1923. John C. Rose, Judge.

37 **Petition for Writ of Error and Order Allowing Same.**

[Filed 3rd February, 1923.]

In the District Court of the United States for the District of Maryland.

At Law.

No. 1293.

[Title omitted.]

Petition for Writ of Error.

To the Honorable John C. Rose, District Judge:

The petition of George W. Cook, an American Citizen resident and domiciled in the City of Mexico, Republic of Mexico, the plaintiff in the above entitled cause, prays that he may be allowed a writ of error to the Supreme Court of the United States from the judg-

ment entered in the said cause on the third day of February, nineteen hundred and twenty-three; that a writ of error and citation may be issued and served upon Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, the defendant in the above entitled cause or his attorney; that the record of the proceedings in said cause be transmitted to the said Supreme Court of the United States, and that the said judgment be reversed, insofar as the same is in favor of the said defendant, and that judgment may be entered in favor of the plaintiff; and that upon the service of a citation, said writ of error may operate as a supersedeas until the final disposition of the cause by the Supreme Court of the United States.

And in support of this petition your petitioner hereby presents his assignment of errors. Chas. Claflin Allen, Chas. Claflin Allen, Jr., Attorneys for Plaintiff. Frederic N. Watriss, Of Counsel.

38 The prayer of the foregoing petition is granted and a writ of error is ordered to issue as prayed and the amount of the writ of Error bond is fixed at $300 00/100 *Dollars* which when approved and filed shall operate as a supersedeas of the judgment herein. John C. Rose, U. S. Circuit Judge. Dated February 3, 1923.

39 **Assignment of Errors.**

[Filed 3rd February, 1923.]

In the District Court of the United States for the District of Maryland.

At Law.

No. 1293.

[Title omitted.]

Assignment of Errors.

Now comes George W. Cook, the plaintiff in the above entitled cause, and files the following Assignment of Errors, upon which he will rely upon his prosecution of the Writ of Error allowed in the above entitled cause entered by this Honorable Court on the third day of February, nineteen hundred twenty-three.

First. The District Court erred in sustaining the demurrer to the declaration and entering the final judgment thereon dismissing the declaration wherein and whereby the Court held the income tax complained of in the declaration to be lawful and within the Constitutional power of the Congress, and within the authority and power of the defendant, Collector of Internal Revenue to assess, levy and collect from the plaintiff in the sums set forth in the declaration filed herein by the plaintiff.

Second. The judgment of the District Court was erroneous in that it should have been entered in favor of the plaintiff and against the defendant because the income tax complained of in the declaration was imposed, assessed and collected without lawful power; was not within the powers granted to Congress in the provisions of the Constitution of the United States; was in violation of the principles of international law; had no basis of authority in any treaty
40 or *or* otherwise under the law of the land; and because of the income tax laws and Revenue Acts insofar as they were used for said taxation of the Plaintiff were unconstitutional, null and void.

Third. The District Court erred in sustaining the demurrer to the declaration and entering final judgment thereon dismissing the declaration and in not overruling the demurrer to the declaration and entering final judgment thereon for the amount prayed for in said declaration against the said defendant because the Income Tax Acts and the Revenue Acts under color of which defendant acted in the assessment, collection and retention by this defendant of the taxes sued for herein and the conduct of said defendant as such Collector of Internal Revenue for the United States in such assessment collection and retention of said income taxes were as to this plaintiff in violation of Section 8 of Article I and of Section 9 of Article I of the Constitution of the United States; and also because the said Income Tax Acts and said Revenue Acts and the said conduct of defendant thereunder are in contravention of the rights of the plaintiff under Amendment V of said Constitution of the United States, in that they constitute a taking of his property without due process of law; and also because the said Acts of Congress and the said conduct of the defendant thereunder are in violation and contravention of the rights reserved to the plaintiff—independently of citizenship—by the Fifth, Ninth and Tenth Amendments to the Constitution of the United States and generally by the first ten amendments to said Constitution, known as "The Bill of Rights."

Fourth. The Court erred in the ruling in sustaining said demurrer to said declaration and in the judgment entered thereon, because the said income tax so imposed, assessed, levied and collected from the plaintiff by the defendant as such United States Collector of
41 Internal Revenue was a "Direct Tax" on real or personal property situated in a foreign country and beyond the jurisdiction of the United States of America to impose, assess, levy or collect, and was so imposed, assessed, levied and collected by duress, and against the repeated protests duly evidenced according to law by the plaintiff, and was so imposed, assessed, levied and collected without power under said Constitution; was in contravention of said Constitution in manner and form set forth in other assignments of error herein and was without power or authority under national or international law.

Fifth. The Court erred in holding by the ruling on said demurrer and set forth in the opinion of the Court that the income tax imposed upon the plaintiff herein was an "indirect tax" and not a "direct tax."

Sixth. It was error in the Court, even if the tax imposed on the plaintiff were to be considered an "indirect tax," to hold that its imposition, assessment levy and collection from the plaintiff in this case was a lawful exercise of the taxing power of the United States, because even if an "indirect tax" the income tax sought to be imposed, assessed, levied and collected in this case against the plaintiff is beyond the powers of the United States for the reason stated in other assignments of error herein. Chas. Claflin Allen, Chas. Claflin Allen, Jr., Attorneys for the Plaintiff, George W. Cook. Frederic N. Watriss, Of Counsel.

42 **Writ of Error Bond.**

[Filed 3rd February, 1923.]

Know all men by these presents, That we, George W. Cook as principal, and The United States Fidelity and Guaranty Company, a corporation of the State of Maryland, as surety, are held and firmly bound unto Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, in the full and just sum of Three Hundred dollars, to be paid to the said Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators and successors jointly and severally, by these presents. Sealed with our seals and dated this 3rd day of February, in the year of our Lord one thousand nine hundred and twenty-three.

Whereas, lately at a District Court of the United States for the District of Maryland in a suit depending in said Court, between George W. Cook, as Plaintiff and Galen L. Tait United States Collector of Internal Revenue for the District of Maryland, Defendant, a Judgment was rendered against the said George W. Cook, Plaintiff, and the said George W. Cook, Plaintiff, having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within Thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said George W. Cook shall prosecute said writ of Error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue. George W. Cook, by Chas. Claflin Allen, Attorney in Fact. (Seal.) United States Fidelity and Guaranty Co., by Howard J. McNamara. (Corporate Seal.)

Sealed and delivered in presence of J. G. Cross.

Approved by John C. Rose, U. S. Circuit Judge.

43 **Writ of Error.**

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, between George W. Cook, Plaintiff, and Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, Defendants, a manifest error hath happened, to the great damage of the said George W. Cook, Plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 3rd day of February, in the year of our Lord one thousand nine hundred and twenty three. Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland. [Seal of the United States District Court, Maryland.]

Allowed by John C. Rose, U. S. Circuit Judge for the Fourth Judicial Circuit.

44 **Citation and Service.**

UNITED STATES OF AMERICA, *ss:*

To Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the District of Maryland wherein George W. Cook is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John C. Rose, United States Circuit Judge for the Fourth Judicial Circuit, this third day of February, in the year of our Lord one thousand nine hundred and twenty-three. John C. Rose, U. S. Circuit Judge.

Attest: Arthur L. Spamer, Clerk District Court of the United States for the District of Maryland. [Seal of United States District Court, Maryland.]

Service of the within Citation acknowledged this 6 day of February, 1923. A. W. Woodcock, U. S. Attorney.

45 In the District Court of the United States for the District of Maryland.

At Law.

No. 1293.

GEORGE W. COOK, Plaintiff,

vs.

GALEN L. TAIT, United States Collector of Internal Revenue for the District of Maryland, Defendant.

Stipulation as to Transcript.

[Filed Feb. 10, 1923.]

It is stipulated and agreed by and between Counsel for the respective parties in the above entitled cause that the transcript of the record on the plaintiff's appeal by writ of error to the Supreme Court of the United States shall consist of the following, viz:

1. Declaration.
2. Writ of Summons and Marshal's return.
3. Order of appearance for defendant.
4. Demurrer to the declaration.
5. Order sustaining demurrer.
6. Opinion of the Court.
7. Waiver of jury trial.
8. Order for judgment.

8½. Judgment.

9. Certificate by the Court that the question determined by the Court involved the construction and application of the Constitution of the United States.
10. Petition for Writ of Error and order allowing the writ.
11. Assignment of Errors.

46 12. Writ of Error Bond.
13. Writ of Error.
14. Citation.
15. Stipulation of counsel as to making up transcript.

Chas. Claflin Allen, Chas. Claflin Allen, Jr., Attorneys for Plaintiff. Frederic N. Watriss, Of Counsel. A. W. W. Woodcock, United States Attorney for District of Maryland, Attorney for Defendant.

47 In United States District Court.

Return to Writ.

In pursuance of the writ of error aforesaid, and according to the statute in such case made and provided, and of the order of court here, a record of the judgment aforesaid, with all things thereunto relating, together with the said writ of error annexed, is hereby transmitted to the said Supreme Court of the United States accordingly. Arthur L. Spamer, Clerk.

In United States District Court.

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Maryland. To wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the aforegoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said District Court this 14th day of February, 1923. Arthur L. Spamer, Clerk. [Seal of United States District Court, Maryland.]

Endorsed on cover: File No. 28,403. Maryland D. C. U. S. Term No. 853. George W. Cook, plaintiff in error, vs. Galen L. Tait, United States Collector of Internal Revenue for the District of Maryland. Filed February 15th, 1923. File No. 29,403.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 220.

GEORGE W. COOK, PLAINTIFF IN ERROR,

vs.

GALEN L. TAIT, UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

STATEMENT, SPECIFICATION OF ERRORS, BRIEF, AND ARGUMENT FOR PLAINTIFF IN ERROR.

CHARLES CLAFLIN ALLEN,
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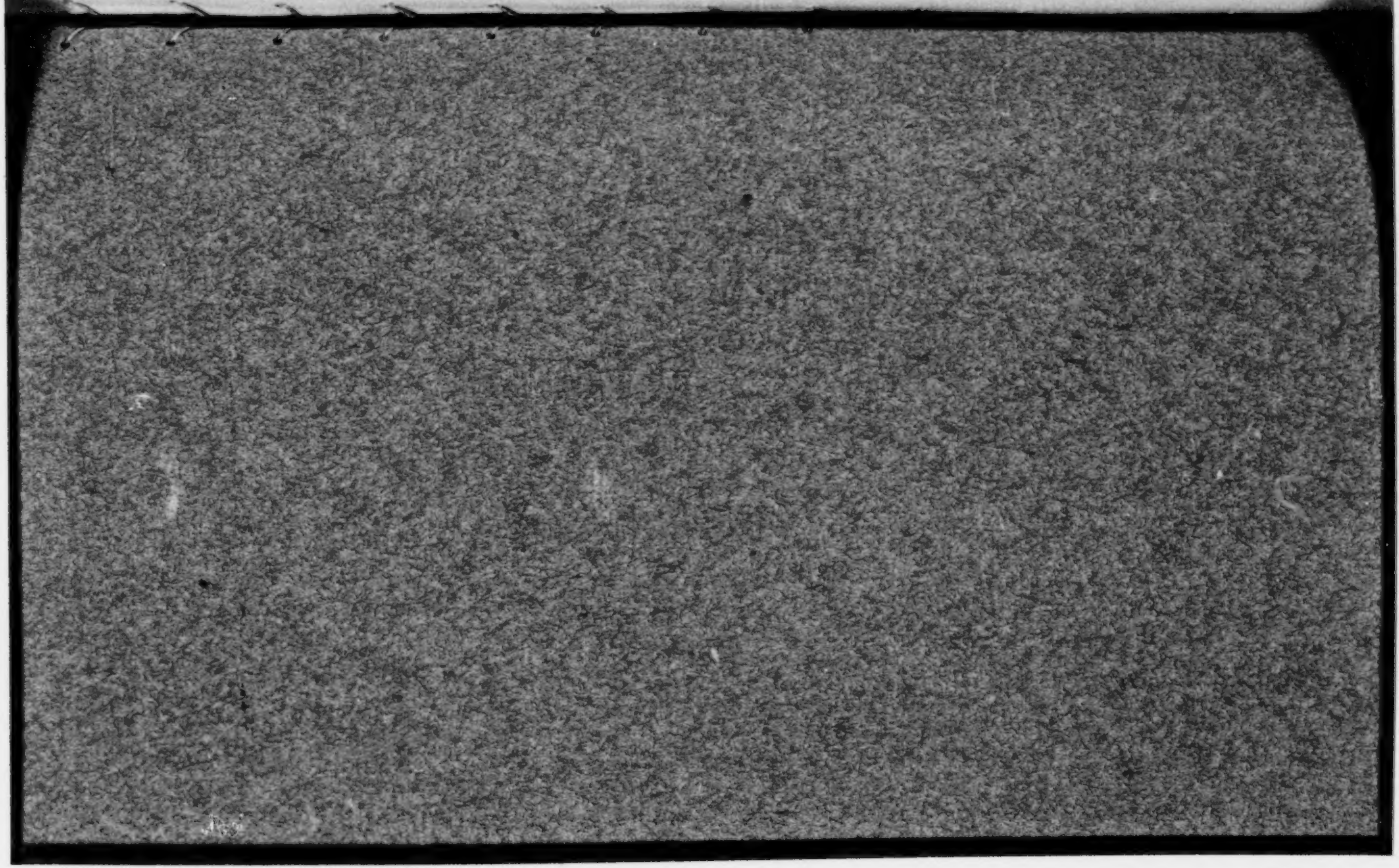

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 220.

GEORGE W. COOK, PLAINTIFF IN ERROR,

against

GALEN L. TAIT, UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, DEFENDANT IN ERROR.

STATEMENT, SPECIFICATION OF ERRORS, BRIEF, AND ARGUMENT FOR PLAINTIFF IN ERROR.

Statement.

The questions in this case are:

I. Has the Congress of the United States the power to levy, assess and collect income tax received by a native citizen of the United States who was during many years before the time when the income was received and continuously thereafter resident and domiciled in Mexico, on income derived solely from real and personal property at all times out-

side the territorial jurisdiction of the United States of America, and solely within the territorial limits and governmental jurisdiction of the Republic of Mexico (Record, pp. 7 and 12)?

and

II. Does the Revenue Act of 1921 authorize such tax?

This is an action against the United States Collector of Internal Revenue at Baltimore to recover back the amount paid under protest on an income-tax assessment for the year 1921.

The declaration avers that the Plaintiff in Error was born in the United States, and that, though Plaintiff has long since, to-wit, in the year 1890, moved to a foreign country, to-wit, the Republic of Mexico, and established a domicile there, the Plaintiff has never been naturalized in or taken an oath of allegiance to that or any other foreign country, but has been at all times and now still is, a citizen of the United States, as aforesaid, but resident and domiciled in the City of Mexico, Republic of Mexico, aforesaid (Record, p. 2).

The Plaintiff in Error further alleged that the Defendant in Error, United States Collector of Internal Revenue at Baltimore, made demand upon the Plaintiff in Error to file a return of his income for purposes of taxation and demanded that Plaintiff in Error make payment of the amount of tax thereon under the United States Income Tax Law of 1921; that the Plaintiff in Error thereupon caused to be filed under protest (Record, pp. 9 to 13), a return of his income for said year, 1921, but denying and protesting (Record, p. 3) against the power of the United States and of said Defendant in Error to demand, assess, or collect from him any tax upon

his said income, alleging that he was a resident and domiciled outside of the United States of America, to wit, in Mexico; that his income was derived solely from real and personal property; that said income and the property from which it was derived were at all times outside the territorial jurisdiction of the United States of America (Record, p. 12); that thereafter the Plaintiff in Error paid to the Defendant in Error under protest (Record, pp. 15-17), the first installment of the income tax assessed by the Defendant in Error upon said income (Record, p. 3).

The return was signed by George W. Cook, the Plaintiff in Error, at his domicile in Mexico City, Mexico, and was sworn to by him before the consul of the United States in Mexico City (Record, p. 11). The return was then filed and the amount paid under protest, as aforesaid, in Baltimore, by his attorney, under power of attorney at law and in fact (Record, pp. 14 and 15) for the purpose of contesting the right to impose such tax, and with notice that unless the amount paid was refunded suit would be filed to recover back said sum (Record, p. 16).

That thereafter Plaintiff in Error filed with the Commissioner of Internal Revenue his claim for refund (Record, pp. 4 and 5), which said claim of refund was by the said Commissioner rejected and denied (Record, p. 6).

The Plaintiff in Error took all other necessary steps provided by law to have the said tax refunded by the Treasury Department, precedent to the filing of this suit.

Plaintiff in Error then filed this suit against Defendant in Error, for the recovery of the tax so paid by him under protest, alleging the foregoing facts.

The Defendant in Error demurred to the declaration

(Record, p. 18) which demurrer was sustained by the court Record, p. 19).

A jury was waived (Record, p. 24) and the Plaintiff in Error having declined to amend or to plead further but electing to stand upon the demurrer judgment was rendered by the court against the Plaintiff in Error and in favor of the Defendant in Error (Record, p. 25), accompanied by a written opinion (Record, pp. 19 to 24).

From the said judgment Plaintiff in Error duly sued out a writ of error to this court on the ground that the case involved the construction and application of the Constitution of the United States, and the constitutionality of a law of the United States (Record, pp. 7 and 8); and the trial court certified that the decision involved the construction and application of the Constitution of the United States (Record, p. 26). That the decision involves the construction and application of the Constitution of the United States also appears from the opinion of the trial court (Record, pp. 19 to 24).

The Specification of Errors Relied Upon.

The Plaintiff in Error made the following Assignment of Errors (Record, pp. 27 to 29):

First. The District Court erred in sustaining the demurrer to the declaration and entering the final judgment thereon dismissing the declaration wherein and whereby the court held the income tax complained of in the declaration to be lawful and within the constitutional power of the Congress and within the authority and power of the Defendant Collector of Internal Revenue, to assess, levy and collect from the Plaintiff in the sums set forth in the declaration filed herein by the Plaintiff.

Second. The judgment of the District Court was erroneous in that it should have been entered in favor of the Plaintiff and against the Defendant, because the income tax complained of in the declaration was imposed, assessed and collected without lawful power; was not within the powers granted to Congress in the provisions of the Constitution of the United States; was in violation of the principles of international law; had no basis of authority in any treaty or otherwise under the law of the land; and because the income tax laws and Revenue Acts in so far as they were used for said taxation of the Plaintiff were unconstitutional, null and void.

Third. The District Court erred in sustaining the demurrer to the declaration and entering final judgment thereon dismissing the declaration and in not overruling the demurrer to the declaration and entering final judgment thereon for the amount prayed for in said declaration against the said Defendant, because the Income Tax Acts and the Revenue Acts under color of which Defendant acted in the assessment, collection and retention by this Defendant of the taxes sued for herein and the conduct of said Defendant as such Collector of Internal Revenue for the United States in such assessment, collection and retention of said income taxes were as to this Plaintiff in violation of Section 8 of Article I and of Section 9 of Article I of the Constitution of the United States; and also because the said Income Tax Acts and said Revenue Acts and the said conduct of the Defendant thereunder are in contravention of the rights of the Plaintiff under Amendment V of said Constitution of the United States, in that they constitute a taking of his property with-

out due process of law; and also because the said Acts of Congress and the said conduct of the Defendant thereunder are in violation and contravention of the rights reserved to the Plaintiff—incependently of citizenship—by the Fifth, Ninth and Tenth Amendments to the Constitution of the United States and generally by the first ten amendments to said Constitution, known as "The Bill of Rights."

Fourth. The Court erred in the ruling in sustaining said demurrer to said declaration and in the judgment entered thereon, because the said income tax so imposed, assessed, levied and collected from the Plaintiff by the Defendant as such United States Collector of Internal Revenue was a "Direct Tax" on real or personal property situated in a foreign country beyond the jurisdiction of the United States of America to impose, assess, levy or collect, and was so imposed, assessed, levied and collected by duress, and against the repeated protests duly evidenced according to law by the Plaintiff, and was so imposed, assessed, levied and collected without power under said Constitution; was in contravention of said Constitution in manner and form set forth in other assignments of error herein and was without power or authority under national or international law.

Fifth. The Court erred in holding by the ruling on said demurrer as set forth in the opinion of the court that the income tax imposed upon the Plaintiff herein was an "indirect tax" and not a "direct tax."

Sixth. It was in error in the court, even if the tax imposed on the Plaintiff were to be considered as "indirect tax," to hold that its imposition, assessment, levy and collection from the plaintiff in this case was a lawful exercise of the taxing

power of the United States, because even if an "indirect tax" the income tax sought to be imposed, assessed, levied and collected in this case against the Plaintiff is beyond the powers of the United States for the reason stated in other assignments of error herein.

BRIEF.

Proposition I.

The Congress of the United States has no power to impose a tax upon income received by a native citizen of the United States who was at the time when the income was received permanently resident and domiciled in the Republic of Mexico when such income was derived solely from real and personal property permanently located at all times without the territorial jurisdiction of the United States and solely within the territorial jurisdiction of the Republic of Mexico.

POINTS.

I. This proposition involves solely the question of the *power* to levy the tax and not the mode of its exercise.

Veazie Bank *v.* Fenno, 8 Wall., 533, 541.

Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429; 158 U. S., 601.

Brushaber *v.* Union Pac. R. R. Co., 240 U. S., 1, 17-19.

Stanton *v.* Baltic Mining Co., 240 U. S., 103, 112 *et seq.*

Eisner *v.* Macomber, 252 U. S., 189.

Peck & Co. *v.* Lowe, 247 U. S., 165, 172-173.

Evans *v.* Gore, 253 U. S., 245, 261.

Nicol *v.* Ames, 173 U. S., 509, 516.

United States *v.* Phellis, 257 U. S., 156, 158.

II. The power of taxation, inherent in sovereignty, is limited to the territorial jurisdiction of the sovereign, and the attempt to impose a tax upon property, persons or business beyond that jurisdiction is void.

Cooley on Taxation, Vol. 1, p. 249.
McCulloch *v.* Maryland, 4 Wheat., 316, 429.
United States *v.* Rice, 4 Wheat., 247, 253.
Loughborough *v.* Blake, 5 Wheat., 317, 318-319.
State Tax on Foreign-held Bonds, 15 Wall., 300.
Dewey *v.* Des Moines, 173 U. S., 193, 204.
De Lima *v.* Bidwell, 182 U. S., 1, 180.
United States *v.* Hayward, 2 Gallis., 485.
St. Louis *v.* The Ferry Co., 11 Wall., 423, 430.
Tappan *v.* Merchants' National Bank, 19 Wall., 490, 499.
Louisville-Jeffersonville Ferry Co. *v.* Ky., 188 U. S., 385, 396.
Union Refrigerator Transit Co. *v.* Ky., 199 U. S., 194.

(*a*) The subject of the tax is the right to the rents and profits from the property realized in the shape of income; this is a property right having its *situs* in the Republic of Mexico.

Dobbins *v.* The Commissioners of Erie County, 16 Pet., 435, 445-446.
Maguire *v.* Trefry, 253 U. S., 12, 16-17.
Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429; 158 U. S., 601.
Brushaber *v.* Union Pac. R. R. Co., 240 U. S., 1.
Gillespie *v.* Oklahoma, 257 U. S., 501.
Greener *v.* Llewellyn, 258 U. S., 354.

Eisner *v.* Macomber, 252 U. S., 189, 206.
Evans *v.* Gore, 253 U. S., 245, 261.
Revenue Act of 1921, Sec. 210.
Sixteenth Amendment.
Nicol *v.* Ames, 173 U. S., 509, 515.
The Schooner Exchange *v.* McFaddon, 7 Cranch, 116, 136.
Selliger *v.* Kentucky, 213 U. S., 200.
Union Refrigerator Transit Co. *v.* Ky., 199 U. S., 194.
Louisville, &c., Ferry Co. *v.* Ky., 188 U. S., 385.
Thirty Hogsheads of Sugar *v.* Boyle, 9 Cranch, 191.
United States *v.* Rice, 4 Wheat., 247, 253.
Fleming *v.* Page, 9 How., 603.

(*b*) The person of Plaintiff in Error is not within the jurisdiction of the United States for purposes of taxation. See authorities cited *supra*, under II (*a*).

(*c*) Citizenship of a native American is neither property nor a privilege granted by Congress and therefore cannot afford any basis for the tax in the instant case.

United States *v.* Rice, 4 Wheat., 429.
Downes *v.* Bidwell, 182 U. S., 282.
Collector *v.* Day, 11 Wall., 113, 124.
Louisville, &c., Ferry Co. *v.* Ky., 188 U. S., 385.
Shaffer *v.* Carter, 252 U. S., 37, 54.
Constitution: Art. I, Sec. 8, par. 1.
Art. I, Sec. 2, Cl. 3.
Art. I, Sec. 9, Cl. 4.
Flint *v.* Stone Tracy Co., 220 U. S., 107, 154.

Citizens' Loan Ass'n *v.* Topeka, 20 Wall., 655.
Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 529.
Moore, American Notes to Dicey on Conflict of Laws, 783, 800.

III. The United States not having the power to impose the tax, its imposition and collection is a mere extortion under the guise of taxation and violates the rights of the Plaintiff in Error guaranteed him under the Fifth Amendment.

State Tax on Foreign-held Bonds, 15 Wall., 300-321.
Transit Co. *v.* Ky., 199 U. S., 194, 202.
Shaffer *v.* Carter, 252 U. S., 37, 54.
Dewey *v.* Des Moines, 173 U. S., 193, 202.

IV. The tax here sought to be imposed is in violation of the natural and inherent rights of Plaintiff in Error and is contrary to the rights reserved—independently of citizenship—by the first ten amendments to the Constitution of the United States, and especially the Fifth, Ninth and Tenth Amendments.

Downes *v.* Bidwell, 182 U. S., 282.
Fong Yue Ting *v.* United States, 149 U. S., 715, 738.

Proposition II.

The tax assessed by the Collector upon the Plaintiff in Error is not within the Statute.

POINTS.

V. The statute does not contain express declaration of authority to impose the tax assessed against the Plaintiff in Error and will be strictly construed in favor of the taxpayer.

Revenue Act, 1921, Sec. 210; 42 Stat., 233.
Revenue Act, 1913, Sec. 2-A, Subd. 1; 38 Stat., 166.
Revenue Act, 1916, Sec. 1-A; 39 Stat., 756.
Revenue Act, 1918, Sec. 210; 40 Stat., 1057.
Mut. Ben. L. I. Co. *v.* Herold, 198 Fed., 199, 201-202.
Same case, U. S. C. C. A., 3d Circuit, 201 Fed., 918.
Eidman *v.* Martinez, 184 U. S., 578, 583.
United States *v.* Goelet, 252 U. S., 293.

VI. The statute must be construed as including only property and persons within the Constitutional power of Congress to reach, so as to keep the statute in harmony with the Constitution.

McCullough *v.* Virginia, 172 U. S., 102, 112.
Sedgwick on Construction (Pomeroy), 2d Ed., 206.

ARGUMENT.

Proposition I.

POINT I.

This proposition involves solely the question of the power to levy the tax and not the mode of its exercise.

The facts in this case present a question of law which involves the question of the power of the United States

to impose the tax. It is often helpful at the outset of a discussion briefly to state what the discussion does not involve in order thereby to limit it and narrow it down to its proper bounds. Obviously, therefore, we are not concerned in this case with the question of whether the tax is a direct or an indirect tax in the Constitutional sense. That is an interesting question about which many controversies have arisen, but which we do not need to touch upon here. Questions of direct and indirect taxation are of interest only as they involve the further question of whether the tax must be equal and uniform, or apportioned according to population; that is to say they deal only with the method and not the power. (Veazie Bank *v.* Fenno, 8 Wall., 533, 541.) It is obvious that if the power to tax is wanting it matters not in what mode it is sought to be exercised.

From these principles it follows that the adoption of the Sixteenth Amendment likewise has no bearing upon this case. The sole purpose of the amendment was not to create any additional power of taxation in the United States, but simply to regulate the mode of its exercise with respect to income taxes and to remove the requirement of apportionment from a tax which, under the case of Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429; 158 U. S., 601, would have to be apportioned but for the amendment, and to permit a tax to be levied without regard to apportionment, which was, at least insofar as it taxed the income from real and personal property, a direct tax in the Constitutional sense.

That the Sixteenth Amendment did not extend the taxing power to any new objects is clearly established.

In Brushaber *v.* Union Pacific Railroad Company, 240

U. S., 1, this Court, speaking through Mr. Chief Justice White, held that the purpose of the Amendment was not to confer power to levy income taxes, an authority already possessed, but the whole purpose was to relieve all income taxes, when imposed, from apportionment. To the same effect are repeated decisions of this Court in the cases of Stanton *v.* Baltic Mining Company, 240 U. S., 103, and Eisner *v.* Macomber, 252 U. S., 189. In the latter case the Court, through Mr. Justice Pitney, said (l. c., 206):

> "As repeatedly held, this [the Sixteenth Amendment] did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income. Brushaber *v.* Union Pacific Railroad Company, 240 U. S., 1, 17-19; Stanton *v.* Baltic Mining Company, 240 U. S., 103, 112 *et seq.*; Peck & Co. *v.* Lowe, 247 U. S., 165, 172-173." (Eisner *v.* Macomber, 252 U. S., l. c., 206.)

In Evans *v.* Gore, 253 U. S., 245, 261, involving the power of the United States to levy a tax upon the income of the United States District Judge, Mr. Justice Van Devanter said:

> "Thus the genesis and words of the Amendment unite in showing that it does not extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on income, whether derived from one source or another."

This Court has never hesitated to seize upon the substance of a tax and determine the rights of the litigants coming before it on grounds based upon that substance.

In Nicol *v.* Ames (173 U. S., 509, 516), speaking through Mr. Justice Peckham, this Court said:

> "Taxation is eminently practical, and is in fact, brought to every man's door, and for the purpose of deciding upon its validity, a tax should be regarded in its actual, practical results, rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy."

No more striking example of the rule that it is the substance and not the form which controls can be found than in the case of Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429). The rule has been stated again and again in this Court. In the recent case of the United States *v.* Phellis (257 U. S., 156, 168), Mr. Justice Pitney, in the opinion of the Court, said:

> "We recognize the importance of regarding matters of substance and disregarding forms in applying the provisions of the Sixteenth Amendment and income tax laws enacted thereunder."

Point II.

The power of taxation, inherent in sovereignty, is limited to the territorial jurisdiction of the sovereign, and the attempt to impose a tax upon property, persons or business beyond that jurisdiction is void.

The tax sought to be imposed by the United States in the instant case is imposed upon the income from real and per-

sonal property which has its permanent location without the territorial jurisdiction of the United States (Record, p. 3); the Plaintiff in Error, who is the recipient of the income, is permanently resident and domiciled without the United States (Record, p. 2), and the income itself which he has received from the said property has never been within the United States, but has always been without its territorial jurisdiction. (Record, pp. 2, 3 and 12.)

The rule is stated by Cooley in his work on taxation, Third Edition, Vol. 1, page 249, as follows:

> "Those cases in which it has been held incompetent for a State or municipality to levy taxes on persons or property not within its limits have generally indicated the want of jurisdiction over the subject of the tax as the ground of invalidity. But such a burden would be inadmissible, also, for the further reason that, as to any property or person outside the district in which the tax was levied, the want of legal interest in the tax would preclude its being subjected to the burden. A State can no more subject to its power a single person or a single article of property whose residence or legal *situs* is in another State than it can subject all the citizens or all the property of such other State to its power." (Citing State Tax on Foreign-held Bonds, 15 Wall., 300; Dewey *v.* Des Moines, 173 U. S., 193, 204.)

We believe that there is no principle in the law of taxation better established by reason and by authority than the proposition that the power of taxation, inherent in the sovereign, is limited to the territory over which the sovereign has jurisdiction; and however vast and far-reaching that power may be, it extends no further geographically than the

territorial limits of the sovereign which imposes it; that taxation must relate either to property or business or to persons within the territorial jurisdiction of the sovereign and if it does not relate to one of those it is wholly void for want of power in the sovereign to impose it.

That a sovereign State can not impose a tax upon property without its territorial jurisdiction is so firmly rooted in our jurisprudence as to require but little more than the statement. It is enough to quote the language of Chief Justice Marshall in M'Culloch *v.* Maryland, (4 Wheat., 316, 429):

> "This proposition may almost be pronounced self-evident."

That the Republic of Mexico and the territory therein is a foreign country scarcely needs support of authority. This Court has, however, in the case of De Lima *v.* Bidwell, (182 U. S., 1, 180), defined what constitutes a foreign country:

> "A foreign country was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States."

In the leading case of M'Culloch *v.* Maryland, (4 Wheat., 316, 429), this Court, speaking through Mr. Chief Justice Marshall, laid down the rule in the following terms:

> "It is obvious, that it [the power of taxation] is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident."

That the rule applies to and means that the power is limited to the *territorial jurisdiction* is clear from many cases. The case of the United States *v.* Rice, (4 Wheat., 247) involved the power of the United States to levy taxes and announced the rule that the taxing power ends with the limits of the territorial sovereign. This case, which was decided at the same term as M'Culloch *v.* Maryland, is decisive of the questions in the instant case. The nature of the Rice case and what was decided by it is best stated by Mr. Justice Story who rendered the opinion therein as follows:

> "That on the first day of September, 1814, Castine [in the State of Maine] was captured by the British and remained in his exclusive possession, under the command and control of his military and naval forces, until after the ratification of the treaty of peace in February, 1815. During this period the British Government exercised all civil and military authority over the place; and established a custom-house, and admitted goods to be imported, according to regulations prescribed by itself, and, among others, admitted the goods upon which duties are now demanded. These goods remained at Castine until after it was evacuated by the enemy; and, upon the re-establishment of the American Government, the collector of the customs, claiming the right to American duties upon the goods, took the bond in question from the defendant, for the security of them.
>
> "Under these circumstances we are all of the opinion that the claim for duty can not be sustained. By the conquest and military occupation of Castine the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States

> over the territory was, of course, suspended, *and the laws of the United States could no longer be rightfully enforced there or be obligatory upon the inhabitants who remained and submitted to the conquerors.* By the surrender the inhabitants passed under a temporary allegiance to the British Government and were bound by such laws, and such only, as it chose to recognize and impose. *From the nature of the case* no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim to obedience." (4 Wheat., l. c., 253.)

In the case last mentioned Daniel Webster filed a brief for the Defendant Rice which Mr. Justice Story treats as decisive, but unnecessary because the proposition was so plain.

In United States *v.* Hayward (2 Gallis., 485), Mr. Justice Story, on Circuit, and sitting with the Circuit Court for the First Circuit decided, upon similar grounds, that the importation of goods into Castine during the British occupation was not a violation of the Non-Intercourse Acts.

Those cases were decided upon the broad grounds contended for by the Plaintiff in Error in the instant case, namely, that the revenue laws of the United States have no force or effect (and are not obligatory upon the inhabitants) beyond the territory over which the United States exercises its sovereignty.

The principle has been consistently followed by this Court every time that the question has arisen.

In St. Louis *v.* The Ferry Company (11 Wall., 433, 430), Mr. Justice Swayne stated the rule as follows:

> "Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra*

> *vires* and void. If the legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. *Jurisdiction is as necessary to valid legislative as to valid judicial action.*" (l. c. 430.)

In the leading case of State Tax on Foreign-held Bonds (Railroad Company *v.* Pennsylvania, 15 Wall., 300, 319, 325), Mr. Justice Field said:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited where the subjects to which it applies are within her jurisdiction." (l. c. 319.)

Again he says:

> "We are clear that the tax cannot be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State. * * * *When the property is out of the State there can be no tax upon it for which the interest can be retained. The tax laws of Pennsylvania can have no extra-territorial operation.*" (l. c. 325.)

In Tappan *v.* Merchants' National Bank (19 Wall., 490, 499), Mr. Chief Justice Waite uses this language:

> "The power of taxation by any State is limited to persons, property, or business within its jurisdiction."

The case of Louisville-Jeffersonville Ferry Company *v.* Kentucky (188 U. S., 385, 396) again announces the rule. The Court had before it a tax levied by the State of Kentucky upon the franchise of a Kentucky corporation whose property consisted largely of an Indiana franchise, giving the right of ferry from Indiana to the Kentucky shore. The Court, in holding that tax was unlawful and beyond the power of the State to levy, announced the rule, speaking through Mr. Justice Harlan, as follows:

> "There is, in our judgment, no escape from the conclusion that Kentucky thus asserts its authority to tax a property right, an incorporeal hereditament, which has its *situs* in Indiana. While the mode, form and extent of taxation are, speaking generally, limited only by the wisdom of the legislature, that power is limited by a principle *inhering in the very nature of the constitutional Government, namely, that*

the taxation imposed must have relation to a subject within the jurisdiction of the taxing Government. Hence this Court, speaking by Chief Justice Marshall in M'Culloch *v.* Maryland (4 Wheat., 316, 429), said that while all subjects over which the sovereign power of a State extends are objects of taxation, 'those over which it does not extend, are, upon the soundest principles, exempt from taxation.' That proposition, he said, could almost be pronounced self-evident." (l. c. 396.)

This case clearly shows that the rule announced in M'Culloch *v.* Maryland, *supra,* namely, that the object of the tax must be within the jurisdiction, refers also to territorial jurisdiction.

In the instant case, whether you consider the property itself from which the income is derived, or the income itself, or the person who is the recipient of the income (see Tappan case, *supra*), the object is outside of the territorial jurisdiction of the United States and is not subject to its taxing power.

In the case of Union Refrigerator Transit Company *v.* Kentucky (199 U. S., 194), this Court held that the taxation of cars owned by a transit company and which were permanently employed without the State were not the subject of taxation by the State.

In the case of Loughborough *v.* Blake (5 Wheat., 317, 318, 319), Chief Justice Marshall held that Congress has authority to levy and collect taxes co-extensive with the *territory* of the United States. While this case is the converse of the proposition for which we are contending here, it clearly shows that the authority is for the exercise of the power of

taxation and the extent thereof is territorial in its nature and is bounded by the territorial limits of the sovereign. Chief Justice Marshall in that case stated the rule as follows:

> "The 8th section of the 1st Article gives to Congress 'the power to lay and collect taxes, duties, imposts and excises' for purposes thereinafter mentioned. This grant is general, without limitation as to place. It, consequently, *extends to all places over which the Government extends.* If this could be doubted, the doubt is removed by the subsequent words which modify the grant. These words are 'but all duties, imposts, and excises shall be uniform throughout the United States.' It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power then to lay and collect duties, imposts, and excises, may be exercised, and must be exercised throughout the United States."

POINT II (*a*).

The subject of the tax is the right to the rents and profits from the property realized in the shape of income; this is a property right having its situs in the Republic of Mexico.

The tax sought to be imposed upon the Plaintiff in Error in the instant case is essentially a tax upon his property rights. Taxes are either levied upon property or upon persons because of their property, which is the same thing.

In the case of Dobbins *v.* the Commissioners of Erie County (16 Pet., 435) the court had under consideration the general income tax imposed by the State of Pennsylvania

upon the income of an officer of the United States Revenue Service consisting of his salary as such officer. The State sought to sustain the tax on the ground that it was a personal charge upon the officer as a citizen and resident of Pennsylvania and was a tax upon his person which the State could lawfully impose because he was a taxable person subject to its jurisdiction and within its territory, and that the tax was a mere personal charge. But this Court laid down the rule that the tax was one upon the property rights of the officer consisting of his income. Mr. Justice Wayne delivered the opinion of the court, and the language thereof is so apt that we quote from it:

> "The first answer to be given to these suggestions [that the tax was a personal charge for which the officer was liable because he was a taxable person subject to the jurisdiction of the State], is, that the tax is to be levied upon a valuation of the income of the office. But, besides the obligation upon persons to pay taxes, is mistaken, and the sense in which a tax is a personal charge, is misunderstood. **The foundation of the obligation to pay taxes is not the privileges enjoyed or the protection given to a citizen by government, though the payment of taxes gives a right to protection.** Both are enjoyed, as well by those members of a State who do not, because they are not able to pay taxes, as by those who are able, and do pay them. * * * And the only sense in which a tax is a personal charge, is, that it is assessed upon personal estate, and the profits of labor and industry. It is called a personal charge, to distinguish such a tax from the taxes upon lands and tenements, which are enforced without any regard to the persons who are the owners. Taxes are never

> assessed, unless it be a capitation tax, upon persons as persons, but upon them *on account of their goods, and the profits made upon professions, trades and occupations.* They are so imposed because public revenue can only be supplied by assessments upon the goods of individuals—'comprehending under the word goods, all the estate and effects which every one hath, of whatsoever sort they be. **Taxes regard the persons of men only because of their goods.' The goods then are taxed and not the person."** (16 Pet., 445-6.)

The tax, then, is essentially a tax upon property rights. In the instant case the income subjected to the tax was derived solely from the real and personal property; the property which was the source of income was permanently located in the Republic of Mexico, as was the recipient thereof and the income which was received. The tax is laid *eo nomine* upon the income. The object of the tax is plainly the right to the rents and profits from the property of Plaintiff in Error realized in the shape of income, which is a property right—the most valuable right, in fact, which he enjoys in relation to his property.

That the object of a tax upon the income from real and personal property is the right to the rents and profits therefrom, realized in the shape of income, a property right, was recently reaffirmed in the case of Maguire *v.* Trefry (253 U. S., 12). In that case the beneficiary of an estate resided in Massachusetts; the estate consisted of bonds and other certificates held and administered by a rustee in the State of Pennsylvania. Massachusetts assessed upon the *cestui que trust* an income tax for the income received in Massachusetts from the securities so held in trust in Penn-

sylvania. The Supreme Court of Massachusetts stated that the income tax was one measured by reference to the riches of the person taxed, actually made available to him during the year, and this Court, speaking through Mr. Justice Day, said that they did not doubt the correctness of this view, and further held that it was property rights of the beneficiary which were being taxed by Massachusetts.

> "'The legal owner holds the direct and absolute dominion over the property in the view of the law; but the income, profits, or benefits thereof in his hands, belong wholly or in part to others.' 2 Story's Equity, 11 Ed., § 964. *It is this property right belonging to the beneficiary realized in the shape of income which is the subject-matter of the tax under the Statute of Massachusetts.*" (l. c. 16 and 17.)

That such a tax is a tax upon property rights was decided for all time, if indeed it needed such confirmation, in the case of Pollock *v.* Farmers' Loan & Trust Company (157 U. S., 429, and 158 U. S., 601). In that case this court held that a tax upon the income from real and personal property was a tax upon the income, which was a property right, and, since the right to receive the income and profits from the property was essentially the right of property itself, that therefore such a tax was, in substance, a tax upon the property which was the source of the income. The controversy in that case concerned the question of whether or not that fact made it a direct tax in the Constitutional sense, so as to require apportionment; a controversy concerning which we are not interested in this case, as we have endeavored to show at the outset.

After the adoption of the Sixteenth Amendment the question as to whether the tax was direct or indirect again came before this Court in the case of Brushaber *v.* Union Pacific Railroad (240 U. S., 1), in which Chief Justice White held that the effect of the Amendment was to prevent an examination of the source of the income to determine whether or not it was direct in the Constitutional sense. But the principle affirmed in the Pollock case in which we are interested in the instant case, viz: that a tax upon the income from real and personal property is a tax upon the right to the rents and profits realized in the shape of income, which is a property right, has never been questioned and, we believe, never can be questioned. Chief Justice White in the Brushaber case specifically referred to the tax as a direct tax upon the income and indirectly upon the source. Clearly the tax in the instant case is a tax upon property rights.

The principle in the Pollock case has been reaffirmed by this Court in a number of cases. In the recent case of Gillespie *v.* Oklahoma (257 U. S., 501) this court held that a tax upon the income from leases of Indian lands is a tax upon the lease. That is a property right, and Mr. Chief Justice White said in the Brushaber case (240 U. S., 1) that the Pollock case gave the word "direct" a broader significance "since it embraced also taxes levied on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution." The Pollock case has also been reaffirmed in the cases of Greener *v.* Llewellyn (258 U. S., 354), Eisner *v.* Macomber (252 U. S., 189, 120), and Evans *v.* Gore (253 U. S., 245, 261).

Indeed the three cases last named seem clearly to hold not only that an income tax is a tax on property rights, but that it is a direct one in the Constitutional sense; and in principle it must be. The Pollock case decided that such a tax was not only a tax upon the source of the income, but a direct one. The Sixteenth Amendment permitted the tax to be levied without apportionment, but clearly did not and could not change its nature. The sovereign power of legislation, whether exercised through the legislature or through Constitutional amendment, is one which deals with the making of laws and laws are rules of civil conduct. Neither legislature nor sovereign people can by enactment change the nature of things. Blackstone says of Parliament: "It can, in short, do everything that is not naturally impossible." (Commentaries, Book 1, page 161.)

The tax is *eo nomine* upon the income and the income is property; in fact it is the best accepted standard of the value of the property itself. Property is commonly valued by capitalizing the income and, indeed, the income itself is property of the most valuable sort; it is the realization of the benefit of the property right. The Revenue Act of 1921, under which the tax in the instant case is sought to be imposed, is as follows, Section 210:

> "That, in lieu of the tax imposed by Section 210 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year *upon the net income* of every individual, a normal tax of 8 per centum of the amount of the net income in excess of the credits provided in Section 216: *Provided*, that in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum." (42, Pt. I Stat. at Large, 233.)

The Sixteenth Amendment likewise specifically authorized the income to be taxed:

> "The Congress shall have power to lay and collect *taxes on incomes,* from whatever source derived, without apportionment among the several States and without regard to any census or enumeration." (Senate Documents, Vol. 3, p. 31 (1921).)

In the case of Brushaber *v.* The Union Pacific Railroad Company (240 U. S., 1, 16), Chief Justice White held that the tax is one directly upon the income.

While we are not concerned in this case with the nature of the present income tax law insofar as it imposes taxes upon income from businesses or professions, it by no means follows that the Plaintiff in Error would be taxable on his income from some business or profession carried on in the Republic of Mexico; he would be taxable therefor, for in such case, the business carried on and the income therefrom would be just as much beyond the taxing power of the United States as the income from real and personal property of the Plaintiff in Error. After all, the form and nature of the tax is, as we have said above, not material to the nature of this case, as every element upon which the taxing power might fasten itself is wanting here. We do affirm, however, that under the facts in this case the plaintiff in error is not subject to the tax; that whatever may be the rule regarding businesses or professions conducted without the United States, the tax upon income derived from real and personal property is a tax upon property rights and, as was said by Mr. Justice Day in Maguire *v.* Treffry, *supra,* it is the property right consisting of the right to the rents and profits from the prop-

erty realized in the shape of income which is taxed. And, as was said by Mr. Justice Wawne in the case of Dobbins *v.* Commissioners of Erie County, *supra,* taxes are never assessed unless it be a capitation tax, upon persons as persons, but upon them on account of their goods and the profits made upon professions, trades and occupations. The tax in the instant case was sought to be imposed upon the Plaintiff in Error solely because of his property.

So, whether the tax be viewed as one upon the property which is the source of the income or upon the income itself, which is property, or upon the right to receive the fruits thereof after its realization, which is property in its highest sense, the tax is one upon property rights.

Reference to the cases first cited under Point II in this brief, without repeating them here, establishes the proposition that property without the jurisdiction cannot be taxed. And the reason of the thing is in accord with the law. Property, in legal contemplation, is not the physical object of the right, but is the right itself, or rather a bundle of rights in relation to physical or even intangible things which are the subject of property. Those rights are the creatures of law and exist solely by virtue of the law of their creation. The facts in this case are that the rights of property affected by this tax, whether they be considered the absolute dominion over the thing or as the right to enjoy the use and profits and income therefrom, or the income itself, exist solely by virtue of the laws of the Republic of Mexico. If the United States can tax them it can destroy them, because the power to tax is the power to destroy; and if it can tax them, it must have power to create them, because the power to tax is also the power to create.

Mr. Justice Peckham in Nicol *v.* Ames (173 U. S., 509, 515) says of the taxing power:

> "It is not only the power to destroy, but it is also the power to keep alive."

The power in the United States to tax these rights would be subversive of the sovereignty of the Republic of Mexico by whose law alone the rights are created and have their being.

Chief Justice Marshall in The Schooner Exchange *v.* McFaddon (7 Cranch., 116, 136), said of sovereignty:

> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty."

If the tax in the instant case were laid upon real estate belonging to the Plaintiff in Error, the case would be quite plain and we will not take up the time of the Court to cite further cases on that proposition. Nor would the tax be valid if it were levied *eo nomine* upon the tangible personal property located in the Republic of Mexico regardless of the domicile of the owner. (Selliger *v.* Kentucky, 213 U. S., 200; Union Refrigerator Transit Co. *v.* Kentucky, 199 U. S., 194.) Nor could the tax be sustained if it were levied upon an intangible right or franchise having its *situs* without the jurisdiction. (Louisville, &c., Ferry Co. *v.* Ky., 188 U. S., 385.)

In the instant case the tax is upon the right of the Plaintiff in Error to the enjoyment of the rents and profits from his

property realized in the shape of income. This is a property right of the most valuable kind. In fact, the most reliable and accurate measure of the value of property itself is the value of this right; the most common way of arriving at the value of the corpus is to capitalize the income therefrom. We have, then, clearly an effort on the part of the United States to tax property rights which are located in and have their sole existence by virtue of the laws of the Republic of Mexico.

Another reason why one sovereign can not tax property located within the jurisdiction of another sovereign is because that property is identified with and owes its allegiance to the sovereignty within whose jurisdiction it is and by virtue of whose laws alone it exists. This distinction is clearly made in the case of Thirty Hogsheads of Sugar *v.* Boyle, 9 Cranch., 191, decided by Mr. Chief Justice Marshall in 1815. In that case certain produce grown on a plantation on the Island of Santa Cruz, after the capture of that island by the British, was captured by an American privateer, while being shipped from Santa Cruz to London. The owner of the plantation and of the produce was a Danish subject and he claimed the property as belonging to him as a neutral, but Mr. Chief Justice Marshall held that the capture and condemnation as a prize was valid on the ground that the property was identified with the sovereign of the soil:

> "When the island became British, the soil and its produce, while that produce remained unsold, were British.
>
> "The general commercial or political character of Mr. Bentzon [the owner] could not, according to this rule, affect this particular transaction. Although

incorporated, so far as respects his general character, with the permanent interests of Denmark, he was incorporated, so far as respected his plantation in Santa Cruz, with the permanent interests of Santa Cruz, which was, at that time, British; and though as a Dane, he was at war with Great Britain and an enemy, yet as the proprietor of land in Santa Cruz, he was no enemy." (9 Cranch., l. c., 197.)

"It is no extravagant perversion of principle, nor is it a violent offence to the course of human opinion to say that the proprietor, so far as respects his interest in this land, partakes of its character; and that the produce, while the owner remains unchanged, is subject to the same disabilities. In condemning the sugars of Mr. Bentzon as enemy property, the Court is of opinion that there was no error, and the sentence is affirmed with costs." (9 Cranch, l. c., 199.)

Consideration of the question of the power to levy the tax in the instant case in the light of history must lead us to the conclusion that the tax is void. Before the adoption of the Sixteenth Amendment a tax such as the one in the case at bar levied upon income from real and personal property was a direct tax which would have to be apportioned among the United States according to population as shown by our census. This limitation fixes not only the proportion but limits the territory in which the tax can be apportioned. In the absence of the Sixteenth Amendment, then, the tax to be valid would have to be apportioned. On what basis would the tax be apportioned to the Plaintiff in Error, since he and his property are in Mexico? The apportionment must be not only according to population, but according to that population as established by the United States census.

What apportionment, then, must be applied to such a tax assessed against the Plaintiff in Error? The embarrassment is not merely one of method, but is plainly one of power. The tax could only be apportioned throughout the territory subject to the jurisdiction of the United States.

The Sixteenth Amendment has not altered the situation as far as the power is concerned.

Nor can the Government gain any aid in support of this tax on the theory that it is an indirect tax in the constitutional sense. We stated in the first point in this brief that the question involved here is one of want of power; that the property and the person both being without the territorial jurisdiction of the United States, no tax could be levied at all and therefore it is quite immaterial whether the tax be direct or indirect in the constitutional sense; for it is plain that if the power be wanting it can not be exercised either through a direct or indirect tax.

In the Brushaber case the late Chief Justice White, although calling the tax an indirect one, plainly holds that it is a tax upon property rights, being imposed directly upon the income from the property and indirectly upon the property. In the case of Flint *v.* Stone Tracy Company, 220 U. S., 108, the learned Solicitor General recalled that the Hylton case (Hylton *v.* U. S., 3 Dallas, 171), although indirect, was certainly a tax upon property; in the cases of Veazie Bank *v.* Fenno, 8 Wall., 533, l. c., 547, and Louisville Ferry Company *v.* Kentucky, 188 U. S., 385, this Court held that a franchise tax is a tax on property rights because a franchise is property. In the case of Gulf & Ship Island Railroad Company *v.* Hewes, 183 U. S., 66, this Court held that a franchise is property and a franchise tax is a tax upon

property and stated that the rule in this Court is that an exemption from taxation of the property of a company includes the exemption from taxes upon its franchise.

A tax upon the capital stock of a corporation, although indirect, is a tax upon its property. Bank Tax Case, 2 Wall., 200; l. c., 210; Pullman Palace Car Company *v.* Pennsylvania, 141 U. S., 18; l. c., 25; Delaware, Lackawanna & Western Railroad Company *v.* Pennsylvania, 198 U. S., 341, 354. Likewise a succession tax, although indirect, is a tax upon property rights of a most valuable kind, that is, the right to succeed to the property. Scholey *v.* Rhew, 13 Wall., 331, 349.

The sovereign in the exercise of its taxing power can no more reach property without its territorial jurisdiction by means of an indirect tax upon that property than it can reach it by a direct tax upon it.

In the case of Louisville Ferry Company *v.* Kentucky, 188 U. S., 385, the State of Kentucky attempted to impose a tax upon one of its own corporations, but in doing so it took into account a franchise which the company owned and which was granted by the State of Indiana. The State of Kentucky in that case attempted to justify the tax upon the ground that it was a franchise tax and therefore only indirectly a tax upon the franchise granted by the State of Indiana. But this Court, after holding that the franchise granted by the State of Indiana was property located in that State, held that the State of Kentucky could no more tax it indirectly through the income derived from it than they could have by levying a direct tax upon it.

In the recent case of Wallace *v.* Hines, 253 U. S., 66, this Court held, in an opinion by Mr. Justice Holmes, that the

sovereign could not reach property of a corporation located without its jurisdiction even by means of an excise tax upon the right to do business in the State, and in the case of Western Union Telegraph Company *v.* Kansas, 116 U. S., 1, it was held in an opinion by Mr. Justice Harlan that such a tax could not be imposed as a condition of a foreign corporation's entry in the State. In the case of United States *v.* Rice, 4 Wheat., 247, Mr. Justice Story held that an import tax could not be levied without the territorial jurisdiction of the sovereign.

POINT II (*b*).

The person of plaintiff in error is not within the jurisdiction of the United States for purposes of taxation.

But it is sought to justify this tax as a tax upon the person of Plaintiff in Error. We have endeavored to show above, both on reason and on the authority of many cases from this Court, commencing with the case of Dobbins *v.* Erie County Commissioners, 16 Pet., 435; through the case of Pollock *v.* Farmers' Loan & Trust Company, 157 U. S., 429; and down through the case of Maguire *v.* Trefry, 253 U. S., 12, that this is a tax upon property rights and not upon the person as such. To sustain the tax on the ground of the personal liability alone would make this tax a capitation tax, which it clearly is not and this Court has so held. Evans *v.* Gore, 253 U. S., 245.

And further, as a tax upon the person of the Plaintiff in Error, the tax in the instant case must fail, because the person of Plaintiff in Error is without the jurisdiction of the United States for purposes of taxation. And the reasons why

the tax cannot be sustained as a tax upon the person of Plaintiff in Error are these:

The power of taxation is legislative in character and, like the legislature itself, can have no force or effect in territory over which the legislature has no power or sovereignty and a law which attempts to reach beyond the territorial jurisdiction is a mere nullity and creates no obligation, personal or otherwise, upon any one or anything within the foreign jurisdiction. U. S. *v.* Rice, 4 Wheat., 247; St. Louis *v.* The Ferry Co., 11 Wall., 423.

In the latter case Mr. Justice Swayne stated the rule as follows:

> *"Jurisdiction is as necessary to valid legislative as to valid judicial action."* (l. c., 430.)

And as stated by Mr. Justice Wayne in Dobbins *v.* Erie County, *supra* (16 Pet., l. c., 445-6):

> "The goods, then, are taxed, and not the person."

This broad principle was clearly announced in the case of the United States *v.* Rice, from which we have quoted above. In that case the inhabitants of Castine though citizens of the United States, were temporarily subject to the jurisdiction of the British Crown, and the power of the United States to tax was denied upon the broad ground that the inhabitants of Castine were not bound by the revenue laws of the United States, but only by such laws as the British Government chose to impose, and that the revenue laws of the United States were no longer obligatory upon the *inhabitants.* The inhabitants of Castine were, so far as their personal relations were concerned, citizens of the United States, although

their allegiance for purposes of taxation was owing solely to the British Crown; and that case clearly holds that even in temporary conquest allegiance is only due, so far as the revenue laws are concerned, to the sovereign which exercises dominion over the territory.

That the temporary conquest does not alter the permanent personal status of the inhabitants as citizens, but only their territorial status is clear from the case of Fleming *v.* Page, 9 Howard, 603, in which Chief Justice Taney, in discussing the question of whether the Port of Tampico was a foreign port within the meaning of the revenue laws taxing imports, held that it was, and that its occupation by our troops, while affecting the relation of the territory as such with all other nations, did not, in itself, constitute the port as an integral portion of the United States, and that the inhabitants were still Mexican subjects.

If, then, the United States has not the power to tax its citizens whose domicile has been temporarily conquered and subjugated by the armed forces of a foreign sovereign, it is clear that it has no power to tax its citizens domiciled in a country which is permanently foreign and subject to the peaceful dominion of a foreign sovereign.

Point II (*c*).

Citizenship of a native American is neither property nor a privilege granted by Congress, and therefore cannot afford any basis for the tax in the instant case.

Since it is plain that there is no jurisdiction over either person or property in the instant case, the Government is

attempting to justify the tax on the ground that the Plaintiff in Error is a citizen of the United States, and therefore the tax can be sustained as a tax upon him because he is a citizen. But this is to make citizenship an object of taxation, or, a special franchise or privilege which can be made the basis of the tax. But citizenship is no franchise, or special privilege, but an inalienable right which Plaintiff in Error enjoys because of his birth; because all persons born in the United States, and subject to the jurisdiction thereof, are citizens. His citizenship is guaranteed him by the Constitution and no power is granted by the Constitution to tax that citizenship.

To make plain the fallacy of attempting to justify this tax as a tax on citizenship, it is only necessary to recollect that the power to tax is the power to create and the power to destroy. But the legislative power did not create this right; neither can it be destroyed by that power. It belongs to the Plaintiff in Error because of his birth; and the legislature cannot take that right from him.

Citizenship expresses a right, a relation between the individual and the State.

This Court has decided, however, that the revenue laws are not binding upon the inhabitants of foreign countries, even though they are citizens of the United States. U. S. v. Rice, 4 Wheat., 429.

The Constitution excludes the idea that citizenship is the basis of taxation. The Fifth Amendment, which protects against arbitrary exaction in the form of a tax, is expressly in favor of all persons; and in a number of cases this Court has held that the Fifth Amendment applies to all persons, whether citizens or not.

In Downes *v.* Bidwell (182 U. S., 282), Mr. Justice Brown says:

> "Even if regarded as aliens they are entitled under the principles of the Constitution to be protected in life, liberty and property." (Citing Yick Wo *v.* Hopkins, 118 U. S., 356; Fong Yue Ting *v.* United States, 149 U. S., 698, and other cases.)

We believe that it is conceded that the tax sought to be imposed in the instant case could not be sustained if levied by a State, but the attempt is made to sustain it on the ground that a different rule applies to the United States because the United States is a sovereign in the international sense. This is an attempt, under another form, to give our revenue laws extra-territorial effect. But that the rule contended for herein by the Plaintiff in Error applies equally to the taxing power of the United States has been clearly decided by the cases above cited, especially the case of the United States *v.* Rice, 4 Wheat., 247.

On principle this must be so. It is elemental that the Government of the United States is one of delegated powers and it is those powers and none others which it exercises; and that those powers have been delegated to it by the several States and by the people thereof. Collector *v.* Day, 11 Wall., 113, 124.

Therefore, the powers which it exercises are no greater than those of the States from which its power was delegated. The rule that no State can levy a tax upon persons or property without its territorial jurisdiction is equally binding upon the Federal taxing power. This limitation upon the power of the States is not expressly contained in the Federal, nor, so far as we have been able to learn, in the State Con-

stitutions, but is inherent in all constitutional government. Louisville *v.* Ky., 188 U. S., 385. And for a similar reason it is a limitation upon the taxing power of the Federal government. If it be said that the limitation upon the taxing power of the States arises by virtue of the Fourteenth Amendment, then the Federal Government is equally limited by the terms of the Fifth Amendment. Shaffer *v.* Carter, 252 U. S., 37, 54.

The document which evidences the grant of powers to the Federal government is the Constitution. The grant of the taxing power is in these terms:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform *throughout the United States.*" (Article I, Section 8, paragraph 1.)

> "Representatives and direct taxes shall be apportioned *among the several States which may be included within this Union,* according to their respective numbers. * * *" (Article I, Section 2, Clause 3.)

> "No capitation, or other direct, tax shall be laid unless *in proportion to the census or enumeration* hereinbefore directed to be taken." (Article I, Section 9, Clause 4.)

From the language of the Constitution itself the conclusion is irresistible that the sovereignty of the United States is territorial and that the power of taxation can only be exercised upon objects within its territorial jurisdiction. As

to direct taxes, they must be apportioned amongst the several States in proportion to population which fixes both the proportion and the territorial limitation upon the power, and as to indirect taxes they must be uniform throughout the United States. And why must they be uniform *throughout the United States?* Obviously, because the United States, as a sovereign, is limited to the territory over which it exercises sovereignty. This is clearly implied in the opinion of Chief Justice Marshall in the case of Loughborough *v.* Blake, 5 Wheat., 317, from which we have quoted above.

We are not dealing here with any power arising out of a treaty, but with the taxing power under the Constitution only.

The rule contended for in this case, that sovereignty is territorial and that the power of taxation does not extend beyond the territory, is equally binding upon the Federal Government as well as the State governments because it is founded on principles inherent in constitutional government which are equally, if not more, applicable to the Federal Government. The power to tax is legislative, and, like the judicial power, is limited to the territory over which the legislature is sovereign. St. Louis *v.* Ferry Co., 11 Wall., 423. And the reason is that, like the judicial power, *it depends upon the power to enforce its mandates within its borders.* Shaffer v. Carter, 252 U. S., 37; l. c., 49.

That the rule applies to the Federal Government as well as the States has been decided in a number of cases. U. S. *v.* Rice, 4 Wheat., 427, squarely decides that the taxing power of the United States ends with its boundaries.

Another expression of the rule was given in the recent case of Evans *v.* Gore, 253 U. S., 245, in which Mr. Justice

Van Devanter stated that, however comprehensive may be the taxing power, there are exceptions besides the ones expressed; that Congress could not impose an income tax in respect to the salary of a judge of a State court nor in respect of interest received from bonds issued by the State, or upon the revenues derived by a city from its ownership of property. (Evans *v.* Gore, 253 U. S., 245; l. c., 255.)

To these must be added another, namely, that the taxing power cannot be exercised upon persons or property without its jurisdiction. (St. Louis *v.* Ferry Company, 11 Wall., 423.)

In the case of Flint *v.* Stone Tracy Co., 220 U. S., 107, Mr. Justice Day, in delivering the opinion of the Court, observes:

> "We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the States in order to support their local government." (Fline *v.* Stone Tracy Co., 228 U. S., —; l. c., 154.)

That there are limitations on the taxing power of Congress otherwise than those expressed in the Constitution is undoubted. In the case of Citizens Loan Association *v.* Topeka, 20 Wall., 655, Mr. Justice Miller, in delivering the opinion of the Court, used this often-quoted language:

> "There are limitations on such power *which grow out of the essential nature of all free governments*—implied reservations of individual rights, without which the social compact could not exist and which are respected by all governments entitled to the name. * * *

> "Of all the powers conferred upon government, that of taxation is most liable to abuse." (Citizens' Loan Ass'n *v.* Topeka, 20 Wall., 655, 662-3.)

And Mr. Justice Field, in his concurring opinion in the Pollock case (157 U. S., 529), said:

> "As stated by counsel: 'There is no such thing in the theory of our national Government as unlimited power of taxation in Congress.' There are limitations, as he justly observed, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without which society could not exist, and which are respected by every government. The right of taxation is subject to these limitations."

As far as we have been able to discover by diligent search, a like tax has never been and is not now sought to be imposed by any other nation upon its subjects or citizens domiciled abroad for any income derived from property situated abroad.

Mr. John Bassett Moore, in his American Notes to Dicey on Conflict of Laws, page 800, states the limits of the British Income Tax Act to be the following:

> "*First,* income tax is payable on any income arising from British source; *secondly,* income tax is payable on any income which, though not arising from a British source, is the income of any person resident in the United Kingdom; and is actually received in the United Kingdom; *thirdly,* income tax is, in general, not payable on any income which is not taxable on one or other of the two foregoing principles."

That the United States is the only country to impose such a tax appears from the Tenth Annual Report of the Secretary of Commerce for the year 1922:

> "The United States is the only important nation which imposes her domestic taxation upon the earned income of her citizens who are resident abroad and engaged in the expansion of American commerce."

The Congress, in reaching out and attempting to exercise wider and wider powers, has, by attempting to impose income taxes upon its citizens resident abroad for income arising abroad, violated that fundamental principle of free government for which the American Colonies fought and won their independence, viz., that taxation without representation is tyranny. That principle, upon which our Government was founded, is applicable to the case at bar. It means that, in a territorial sense, the legislature ought not and cannot lay taxes upon persons and property without its territorial jurisdiction. It is not contended that the principle, taken in a literal sense, implies that only those who vote can be taxed; but in the territorial sense, it is the law.

It is a matter of history that England learned her lesson from the American Revolution, and since that time has not even attempted to tax her own Colonies.

Mr. John Bassett Moore, in his American Notes to Dicey on Conflict of Laws, *supra*, observes:

> "That, since the close of the contest with the American Colonies, Parliament has never intentionally taxed property which is wholly and exclusively connected with a country which, even though it belonged to the British Dominions does not form part of the United Kingdom. In other words, the property on

or in respect of which duties or taxes are imposed by Parliament, is always property which has some territorial connection with the United Kingdom, or part thereof." (P. 783.)

The United States of America, then, a nation founded on the principle that the taxing power is territorial is the only nation in the world which taxes its citizens domiciled abroad, in violation of the principle upon which it was founded. And it is no answer to say that the Plaintiff in Error has the privilege of returning to the United States and therefore cannot complain. A like argument would have required the American Colonists to return to England.

Under our Constitution this principle is not merely a political one. Our Constitution must be interpreted in the light of those principles of government upon which it was founded. The rule that the taxing power is territorial is inherent in our Constitution and it has been so decided by this Court in the cases cited above.

Whatever may be the practices of other nations in regard to this rule, our own Constitution and our own principles of government, as interpreted by the decisions of this Court, must be our only guide. (Fleming *v.* Page, 9 Howard, 604, 618.)

Tested by this standard, the tax in the instant case must fall.

There is one case containing dictum on the subject of taxing American citizens resident abroad which we should notice at this point. In the case of U. S. *v.* Goelet, 232 U. S., 293, this Court had before it for consideration the Tariff Act of 1909, which levied a tax upon the use by an American citizen of foreign-built yachts. It appears in that

case that Goelet was permanently domiciled in Paris and had a yacht which he had used which had been built in England and was located in English territorial waters. The Court decided the question on the construction of statute and, viewing the tax as one so extraordinary as to require careful scrutiny of the act to see if so unusual a tax was intended, decided that the act was not intended to cover the facts in that case. The late Chief Justice White, then associate justice, who delivered the opinion, stated that he was not questioning the power to impose an excise duty upon the use of a foreign-built yacht by an American citizen domiciled abroad. The government, however, in its brief and argument, had pointed out that by the immemorial custom and the law of nations, a vessel owned by an American citizen was subject to the jurisdiction of the United States even though not under American registry and therefore the United States had jurisdiction over the vessel; (The Conqueror, 166 U. S., 110, 119) and the Chief Justice, no doubt, had this in mind in making the foregoing statement.

However, the case was decided on the basis of statutory construction and the statement was dictum. If the Chief Justice intended to state that the United States could tax persons or property without its territorial jurisdiction, the statement is in direct conflict with the decisions of this Court in U. S. *v.* Rice, 4 Wheat., 427; St. Louis *v.* The Ferry Co., 11 Wall., 423; Louisville Ferry Co. *v.* Ky., 188 U. S., 385, and Shaffer *v.* Carter, 252 U. S., 37, 49.

It is interesting to note that no cases in support of such a proposition were cited by the Government in its brief in the Goelet case, nor by the Court in its opinion, and we believe that the reason why no case was cited was because there are

no such cases, but on the contrary the law is as we have stated it herein. The Goelet case has never been cited in any case in any court that we have discovered until it was cited by the Court below in this case.

Furthermore the tax upon the foreign-built yachts was clearly upon their use and not upon the privilege of the use, which is the equivalent of the ownership, a distinction which was pointed out by Justice White in the companion case of Billings *v.* U. S., 232 U. S., 261.

The tax in the case at bar, however, is upon the right to receive the rents and profits from the property realized in the shape of income which is essentially the property itself and not any specific use.

Nor can the tax in the case at bar be sustained upon any theory of a right to protection by the Government of the United States to its citizens in Mexico. Any such claim assumes the reciprocal relation of protection and obligation to pay taxes. But any obligation the Government may have to protect its citizens in Mexico is purely political and discretionary with the administrative department of the Government. The Plaintiff in Error, if he thinks he is wronged by the Government of Mexico or its citizens, has no legal right to claim protection from the United States, and if he demands it he may lawfully be refused by the Executive Department, whereas the Government, in the instant case, is claiming a legal right to the tax, and is seeking to enforce payment as a legal obligation.

But we are dealing in the instant case with legal rights and duties arising out of the *legislative* power, and the sovereign must have a *legal* interest in the tax. Especially is this true of property rights which exist solely by virtue

of the laws of Mexico and are protected solely by its laws. The only remedy this Plaintiff in Error could have for an infringement of his property rights would be to resort to the courts of Mexico, to which alone he could look for redress. The very right of the Plaintiff in Error to receive the income upon which the tax was assessed in the instant case exists solely by virtue of the laws of the Republic of Mexico.

Point III.

The United States not having the power to impose the tax, its imposition and collection is a mere extortion under the guise of taxation and violates the rights of the Plaintiff in Error guaranteed him under the Fifth Amendment.

That an extortion under the guise of a tax is in violation of the Fifth Amendment is so well settled as scarcely to require citation of authority.

In the case of State Tax on Foreign-held Bonds, 15 Wall., 300, this court held that such a tax is an oppressive exaction amounting to nothing less than an arbitrary seizure of private property. (State Tax on Foreign-held Bonds, 15 Wall., 300; l. c., 321.)

In the case of Union Refrigerator Transit Company *v.* Ky., 199 U. S., 194, such a tax was held to be an extortion and a taking of property without due process. (Transit Co. *v.* Ky., 199 U. S., 194; l. c., 202.)

In the case of Shaffer *v.* Carter, 252 U. S., 37, 54, Mr. Justice Pitney, delivering the opinion of the court on the question of the Power of Levying Income Taxes on Non-Residents, said:

> "And, so far as the question of jurisdiction is concerned, the due process clause of the Fourteenth Amendment imposes no greater restriction in this regard upon these several States than the corresponding clause of the Fifth Amendment imposes upon the United States."

In the case of Dewey *v.* Des Moines, 173 U. S., 193, 202, this court held that an attempt to impose a personal liability upon a non-resident was a violation of the Federal Constitution.

The imposition of a tax sought to be collected in the instant case is unlawful. That the Government, lacking the power or the means to collect it, has attempted to enforce the collection through unlawful means is common knowledge. The State Department refuses passports to American citizens going in or coming out of the United States until they have paid the income tax, regardless of whether the income arose from sources within the United States or from foreign sources. This was admitted by the Government in the court below. The Government has even gone so far as to threaten expatriation as a means of extorting a tax from American citizens abroad. Mr. Bryan, Secretary of State under the Administration of President Wilson, by letter of March 18, 1914, instructed all consular officers of the United States, in all questions involving United States citizenship, to take as evidence of expatriation of native American citizens the fact that the person had not paid an income tax to the United States. (Corporation Trust Company Income Tax Service, 1921, par. 516.)

Point IV.

The tax here sought to be imposed is in violation of the natural and inherent rights of Plaintiff in Error and is contrary to the rights reserved—independently of citizenship—by the first ten amendments to the Constitution of the United States, and especially the Fifth, Ninth, and Tenth Amendments.

The threat in public documents of expatriation by the Executive Department of the Government, without judicial process, notice or a hearing, is sufficient foundation for invoking the Constitutional guarantees of the Bill of Rights in the first ten amendments to the Constitution. As noted elsewhere, even aliens are entitled to the protection of life, liberty and property (Mr. Justice Brown in Downes *v.* Bidwell, 182 U. S., 282, and cases there cited), it is not necessary even that Plaintiff in Error should base his claims to fredom from intrusion upon his property rights by the Government, in the instant case on the fact that he is a "native American citizen." He can stand under the shield of the Amendments independent of citizenship; for none of the ten amendments use the word citizen. (See analysis of the ten amendments by Mr. Justice Brewer in his dissenting opinion in Fong Yue Ting *v.* United States, 149 U. S., 715, 738). And whether the threatened deprivation be of liberty and property under the Fifth Amendment or an interference with individual rights under the Ninth Amendment, or the share in collective powers reserved to the people under the Tenth Amendment, the Plaintiff in Error is entitled to the protection of this Court from a violation of those Constitutional guarantees.

Proposition II.

The tax assessed by the collector upon the Plaintiff in Error is not within the statute.

Point V.

The statute does not contain express declaration of authority to impose the tax assessed against the Plaintiff in Error and will be strictly construed in favor of the taxpayer.

The Revenue Act, Section 210, upon which the authority of the collector to assess the tax in the case at bar rests, is as follows:

> "That, in lieu of the tax imposed by Section 210 of the Revenue Act of 1918, there shall be levied, collected and paid for each taxable year upon the net income of every individual a normal tax or eight per centum of the amount of the net income in excess of the credits provided in Section 216; provided that in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum." (42 Stat., 233.)

An examination of this statute fails to disclose any express declaration that citizens resident and domiciled abroad should be taxed for their income derived from foreign sources, and in the absence of such express declaration the intent cannot be presumed, for the rule in the construction of Revenue Acts is, that a statute providing for the imposition of taxes is to be strictly construed and all reasonable doubts in respect thereto resolved against the Government and in favor

of the citizen, and mere use of the general language, "citizens" will not be extended to include so extraordinary an imposition as the one presented by the case at bar.

No income-tax statute was attempted to be passed, after the Act of 1894, until after the adoption of the Sixteenth Amendment, when Congress enacted the Revenue Act of 1913. The pertinent provisions thereof are as follows:

> "Section 2-A, Subdivision 1: That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States *whether residing at home or abroad* and to every person residing in the United States, though not a citizen thereof, a tax of one per centum per annum upon such income except as hereinafter provided; and a like tax shall be assessed, levied, collected and paid annually upon the entire net income from all property owned and of every business, trade or profession carried on in the United States by persons residing elsewhere." Act of October 3, 1913, 38 Stat., p. 166.

This Act was repealed and re-enacted by the Revenue Act of 1916—Act September 8, 1916, 39 Stat., p. 756—and the following substituted in lieu thereof:

> "Section 1-A. That there shall be levied, assessed, collected and paid annually upon the entire net income received in the preceding calendar from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected and paid annually upon the entire net income received in the preceding calendar year from all

sources within the United States by every individual, a non-resident alien, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise."

This act was repealed and re-enacted by the Revenue Act of 1918, Act February 24, 1919, 40 Stat., p. 1057, the pertinent part of which is Section 210, and is similar in all respects relating to the question at issue in the case at bar to the corresponding section of the Revenue Act of 1921, which we have quoted.

It thus appears that over a period of years through which Congress enacted income tax statutes it consistently expressed the purpose to tax citizens resident abroad upon income from all sources from 1864 through the Act of 1913, but by the Act of 1916, this express provision was omitted. We can only infer therefrom the intention not to tax an American citizen domiciled and resident abroad for income received from foreign sources.

The rules of construction applicable to this branch of the case are well stated in the case of Mutual Benefit Life Insurance Company *v.* Herold, 198 Fed., 199 (District Court for the District of New Jersey), affirmed 201 Fed., 918 (U. S. C. C. A., 3rd Circuit), in the following language:

> "At the outset it may be remarked that a statute providing for the imposition of taxes is to be strictly construed, and all reasonable doubts in respect thereto resolved against the Government and in favor of the citizen. This principle is so well established that the citation of any considerable number of authorities in its support is unnecessary. In Spreckles Sugar Co. *v.* McLain, Collector, etc., 192 U. S., 397, 416; 24 Sup. Ct., 376, 382 (48 Law Ed., 496), Mr. Justice Harlan

quoted with approval the following language of Judge Gray: 'Keeping in mind the well-settled rule that the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that, where the construction of the tax is doubtful the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.'

"In Benziger *v.* U. S., 192 U. S., 38; 24 Sup. Ct., 189; 48 L. Ed., 331, it was held with reference to a classification under the Tariff Act that the provision of the statute—'should be liberally construed in favor of the importer, and if there were any fair doubt as to the true construction of the provision in question, the court should resolve the doubt in his favor.'

"That case cited with approval American Net & Twine Co. *v.* Worthington, 104 U. S., 468; 12 Sup. Ct., 55; 35 L. Ed., 821, and United States *v.* Wigglesworth, 2 Story, 369; Fed. Cas. No. 16,690, in which latter case it was held that, 'It is * * * a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the Government, and in favor of the subjects or citizens, because burdens are not to be imposed nor presumed to be imposed beyond what the statutes expressly and clearly import.'" (198 Fed., l. c., 201-202.)

Tested by this rule, the general language of the act taxing citizens cannot be construed to include citizens permanently resident and domiciled abroad upon their income received

from foreign sources. This rule was laid down specifically by Chief Justice White in the case of United States *v.* Goelet, 232 U. S., 293, in interpreting the Tariff Act of 1909, imposing a tax upon the use of foreign-built yachts by American citizens. The citizen in that case was domiciled in Paris, and the Court, after stating that sukch a tax would be wholly exceptional and extraordinary, construed the act not to include such a citizen merely by the use of general language purporting to include all citizens.

> "Considering the text, we search in vain for the express declaration of such authority. True, it is argued by the United States that as the tax is levied on any citizen using a foreign-built yacht, and as any includes all, therefore the statute expressly embraces a citizen permanently domiciled and residing abroad. But this argument in effect begs the question for decision which is whether the use of the general words 'any citizen' without more, should be considered as expressing more than the general rule of taxation, or in other words can be treated without the expression of more as embracing the exceptional exertion of the power to tax one permanently residing abroad. As illustrative and throwing light on the real question for decision, action taken by Congress in exerting its taxing power is at least worthy of note. For instance the provisions of the Income Tax Law of June 30, 1864 (chap. 173, 13 Stat. l., 223, 281), expressly extended that tax to those domiciled abroad, and a like purpose is beyond doubt expressed in the Income Tax of 1913 (subdivision 1 of the Tariff Act of October 3, 1913)." (232 U. S., l. c., 297.)

A similar rule is stated by this Court in the case of Eidman *v.* Martinez, 184 U. S., 578. Mr. Justice Brown, in delivering the opinion in that case, states the rule to be as follows:

> "It is an old and familiar rule of the English Courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty." (Eidman *v.* Martinez, 184 U. S., l. c., 583.)

We must conclude, then, that Congress, by failing to expressly declare its intention to tax the Plaintiff in Error, did not so intend, especially in view of the expression of that intent in the earlier income tax statutes.

POINT VI.

The statute must be construed as including only property and persons within the constitutional power of Congress to reach, so as to keep the statute in harmony with the Constitution.

This rule of construction is elemental and needs but little citation of authority. It is the rule to construe statutes, especially taxing statutes, as applied only to objects within the power of the Legislature so as to avoid bringing the act into conflict with the Constitution. Mr. Justice Brewer, in the case of McCullough *v.* Virginia, 172 U. S., 102, states the rule clearly in the following language:

> "It is elementary law that every statute is to be read in the light of the Constitution. However broad and general its language, it can not be interpreted as extending beyond those matters which it was within the constitutional power of the Legislature to reach. It is the same rule which obtains in the interpretation

> of any private contract between individuals. That, whatever may be its words, is always to be construed in the light of the statute; of the law then in force; of the circumstances and conditions of the parties. So, although general language was introduced into the Statute of 1871, it is not to be read as reaching to matters in respect to which the Legislature had no constitutional power, but only as to those matters within its control. And if there were, as it seems there were, certain special taxes and dues which under the existing provisions of the State Constitution could not be effected by legislative action, the statute is to be read as though it in terms excluded them from its operation." (172 U. S., l. c., 112.)

The rule is stated in Sedgwick on the Construction of Statutory and Constitutional Law, Second Edition (Pomeroy), as follows (page 266):

> "It has been said that it is a safe and wholesome rule, to adopt a restricted construction of a Statute when a very liberal one will bring us in conflict with the fundamental law."

In the instant case the Legislature has not expressly declared its intention to tax the plaintiff in error, and general words applying to citizens will not be construed as applying to him because such a construction would bring the act into conflict with the Constitution.

Summary.

In brief, we submit that the law of this case forbids the imposition of the tax upon the Plaintiff in Error for the following reasons:

The taxing power is limited to objects within the jurisdiction. M'Culloch *v.* Maryland, 4 Wheat., 316; United States *v.* Rice, 4 Wheat., 247; State Tax on Foreign-held Bonds, 15 Wall., 300.

The object of the tax in the case at bar is a property right—the right to the rents and profits from the property realized in the shape of income. Dobbins *v.* Erie County Commissioners, 16 Pet., 435; Pollock *v.* Farmers' Loan & Trust Company, 157 U. S., 429; Maguire *v.* Trefry, 253 U. S., 12.

It is not material whether the tax is direct or indirect in the Constitutional sense, because such classification relates to the mode of the exercise, not the power to impose the tax. Veazie Bank *v.* Fenno, 8 Wall., 533, 541; and objects without the jurisdiction can no more be reached through an indirect tax than through a direct one. Louisville-Jeffersonville Ferry Co. *v.* Kentucky, 188 U. S., 385; Wallace *v.* Hines, 253 U. S., 66; Western Union Telegraph Co. *v.* Kansas, 116 U. S., 1.

The facts in the instant case are that the object of the tax has a permanent *situs* in the Republic of Mexico and without the jurisdiction of the United States.

The tax cannot be sustained as a tax upon the person because the person of the Plaintiff in Error is permanently without the territorial jurisdiction of the United States, and because the taxing power is legislative in character and territorial jurisdiction is as necessary to valid legislative as to valid judicial action. St. Louis *v.* Ferry Company, 11 Wall., 423, 430. This is so because governmental jurisdiction in matters of taxation, as in the exercise of the judicial function, *depends on the power to enforce its mandates by action within its own borders.* Shaffer *v.* Carter, 252 U. S., 37, 49.

The rule applies to the taxing power of the United States just as it does to that of the States, because in questions of governmental jurisdiction for purposes of taxation, the Fourteenth Amendment imposes no greater limitation upon the States than the Fifth imposes upon the United States; Shaffer *v.* Carter, 252 U. S., 37, 54; and because it is inherent in all constitutional government; Louisville &c. Ferry Company *v.* Kentucky, 188 U. S., 385, 396.

Citizenship is not a special privilege or franchise which can be made the basis of taxation by Congress.

For all these reasons the revenue laws of the United States are not binding upon its citizens domiciled without its jurisdiction and under foreign dominion. United States *v.* Rice, 4 Wheat., 247.

Historically considered, the tax, if levied before the Sixteenth Amendment, would have had to be apportioned among the several States according to the United States census, and therefore none could have been apportioned to the Plaintiff in Error domiciled and resident in Mexico. Pollock *v.* Farmers' Loan & Trust Company, 157 U. S., 429. The Sixteenth Amendment conferred no new power on the United States to levy income taxes. Evans *v.* Gore, 253 U. S., 245.

The tax assessed against the Plaintiff in Error is not within the Statute; for the Statute does not contain express declaration of authority to impose the tax and will be strictly construed in favor of the taxpayer. Mutual Benefit Life Insurance Company *v.* Herold, 198 Fed., 199; 201 Fed. 918; U. S. *v.* Goelet, 232 U. S., 293; and because it must be construed as including only property and persons within the constitutional power of Congress to reach so as to keep the

Statute in harmony with the Constitution. McCullough *v.* Virginia, 172 U. S., 102, 112.

Since the statute does not authorize the imposition of the tax nor has the United States the power to impose it, its imposition and collection is a mere extortion under the guise of taxation and violates the rights of the plaintiff in error guaranteed him under the Fifth Amendment as well as under other amendments constituting the Bill of Rights. Union Refrigerator Transit Company *v.* Kentucky, 199 U. S., 194; Shaffer *v.* Carter, 252 U. S., 37; Dewey *v.* Des Moines, 173 U. S., 193.

Conclusion.

We submit that it is settled law under the decision of this Court that the United States can not tax objects beyond its territorial jurisdiction and that an attempt to justify the tax because of the citizenship of Plaintiff in Error is likewise futile. The State of Pennsylvania endeavored to justify a tax upon the income of a Federal officer on just that ground and failed (Dobbins *v.* Erie County, 16 Pet., 435); the United States endeavored to justify a similar tax upon salaries of Federal judges and likewise failed (Evans *v.* Gore, 253 U. S., 245, 261).

The Government in the Pollock case argued that the tax was merely assessed upon the taxpayer personally on account of his money spending power as shown by his revenue for the preceding year; but this Court held that it was a charge upon his property rights. (158 U. S., l. c. 629.)

The State of Kentucky attempted to justify such a tax by means of a franchise tax upon one of its own corporations as a corporate obligation of the company to the source of its

existence, and failed. (Louisville, &c., Ferry Company *v.* Kentucky, 188 U. S., 385.)

Kansas attempted it on the ground that it could do so as the personal obligation of the corporation for doing business in the State, and failed. (Western Union Telegraph Co. *v.* Kansas, 116 U. S., 1.)

North Dakota attempted to justify such a tax as a condition of doing business in the State, and failed. Wallace *v.* Hines, 253 U. S., 66. And in the instant case the United States must fail here for the same reasons.

To sustain this tax this Court must overthrow a principle of taxation which has existed as long as our Government, and supported by an unbroken line of decisions of this Court. To sustain this tax would be to establish a new principle of taxation in American jurisprudence, whose consequences would be far reaching and difficult to foretell.

On principle and on authority the tax is void and totally beyond the power of Congres to impose.

The principles for which we are contending are, in the language of Mr. Justice Story in United States *v.* Rice, 4 Wheat., 427, "too clear to require any aid from authority," and are, as said by Mr. Chief Justice Marshall in the case of M'Culloch *v.* Maryland, 4 Wheat., 316, "almost self-evident," and are, in the language of Mr. Justice Field, in the case of State Tax on Foreign-held Bonds, 15 Wall., 300, "so plain that no adjudication should be necessary to sustain a proposition so obvious."

On the other hand, to affirm this case and sustain this tax would be, in the language of Mr. Justice Holmes in Wallace *v.* Hines, 253 U. S., 66, "to expose the heel of the system to

a mortal dart," and to enforce "under the name of taxation, an oppressive exaction * * * made without constitutional warrant, amounting to little less than an arbitrary seizure of private property." (State Tax on Foreign-held Bonds, 15 Wall., 300, 321.)

Therefore, we respectfully pray the Court that the judgment of the District Court be reversed and remanded to the District Court, with directions to enter judgment for the Plaintiff.

Respectfully submitted,

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Chas. Claflin Allen, Jr.

Attorneys for Plaintiff in Error.

Frederic R. Coudert
Of Counsel.

No. 220.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

GEORGE W. COOK, PLAINTIFF IN ERROR,

v.

GALEN L. TAIT, UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

BRIEF FOR THE DEFENDANT IN ERROR.

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BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT.

The plaintiff, a citizen of the United States, residing in the Republic of Mexico, instituted this action to recover $298.34, being his first installment of income tax for the year 1921. The tax was collected under Section 210 of the Revenue Act of 1921.

The defendant filed a general demurrer to the declaration. This demurrer was sustained by the District Court, which dismissed the suit. The case was thereupon brought to this Court.

The plaintiff alleges that he was born in the United States of America; that in the year 1890 he

moved to the Republic of Mexico and there established a residence and has continuously resided in the Republic of Mexico since that date; that he is still a citizen of the United States. He alleges that on March 13, 1922, he filed under duress and protest, and in order to avoid certain penalties of the Revenue laws, an income-tax return for the year 1921 with the Collector of Internal Revenue at Baltimore, Maryland, the defendant herein, showing an income tax due the United States in the sum of $1,193.38; and that on March 15, 1922, he paid to defendant the first installment, or one-fourth of the tax, in the sum of $298.34. He further alleges that the entire income set out in the said income-tax return filed with the defendant and on which the tax was paid was derived entirely from sources without the United States; that it was derived from real and personal property located in the Republic of Mexico; and that he thereafter filed a claim for refund of the amount of tax paid, and said claim was subsequently denied by the Commissioner of Internal Revenue.

The bill does not deny that the tax imposed by the statute in question applies to the net income of nonresident citizens derived from sources outside of the United States. It challenges only the authority of Congress to impose such a tax. Apparently as an afterthought, the plaintiff's brief in this Court touches upon the interpretation of the statute under which the tax was assessed and collected. The case, however, appears to turn upon the question *whether a tax imposed by Congress on net income of a nonresi-*

dent citizen of the United States, the income being derived entirely from sources within another country, is repugnant to the Constitution of the United States.

ARGUMENT.

I.

The Constitution confers on Congress a broad power to lay and collect taxes.

By Article I, Section 8, Clause 1, the Constitution provides that "The Congress shall have power: To lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States."

Referring to this power of Congress to impose taxes, the Supreme Court said in the *License Tax cases*, 5 Wall. 462, 471:

> It is given in the Constitution with only one exception and only two qualifications. Congress can not tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, *and thus only*, it reaches every subject, and may be exercised at discretion. [Italics ours.]

The rule announced in these cases was restated and affirmed in *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 557. To the same effect are *Nicol* v. *Ames*, 173 U. S. 509, 515; *Knowlton* v. *Moore*, 178 U. S. 41; and *Flint* v. *Stone Tracy Co.*, 220 U. S. 107.

In *Brushaber* v. *Union Pacific R. Co.*, 240 U. S. 1, Mr. Chief Justice White said (pp. 12, 13):

> That the authority conferred upon Congress by section 8 of Article I "to lay and collect taxes, duties, imposts and excises" is exhaustive and *embraces every conceivable power of taxation* has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. [Italics ours.]

The Chief Justice pointed out (p. 13) that it has never been questioned that

> there was authority given, as the part was included in the whole, to lay and collect income taxes.

He added (p. 13) that the requirements of apportionment and uniformity

> were not so much a limitation upon the complete and all embracing authority to tax, but in their essence were simply regulations concerning the mode in which the plenary power was to be exerted.

II.

The tax imposed on the plaintiff is not unconstitutional because it applies to income from property outside of the United States.

The plaintiff contends that a tax upon income which is derived entirely from real and personal property situated in the Republic of Mexico is a tax upon that property.

As already pointed out, this Court has decided that even before the adoption of the Sixteenth

Amendment Congress might tax all property and the income from all property. Even under the decision in *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 158 U. S. 601, income from property might be taxed, although subject to a condition which made the imposition of such a tax difficult. *The Sixteenth Amendment forbids the application to taxes upon incomes from property of the rule adopted in the Pollock Case by which the Court took into view the burden which fell on the property from which the income was derived.* This is clearly shown by the decision in *Brushaber* v. *Union Pacific R. Co.*, 240 U. S. 1, where this Court said by the late Chief Justice (p. 18):

> The whole purpose of the [Sixteenth] Amendment was to relieve all income taxes when imposed from apportionment *from a consideration of the source whence the income was derived.* * * * *The Amendment was drawn for the purpose of doing away for the future with the principle upon which the Pollock Case was decided, that is, of determining whether a tax on income was direct* not by a consideration of the burden placed on the taxed income upon which it directly operated, but *by taking into view the burden which resulted on the property from which the income was derived.* * * * *The command of the Amendment* that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived, *forbids the application to such taxes of the rule applied in the Pollock Case by which alone such taxes were removed from the great class of excises, duties,*

> *and imposts* subject to the rule of uniformity and were placed under the other or direct class. [Italics ours.]

In *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103, 112, 113, the Court said that by the ruling in the *Brushaber case* it was settled that the Sixteenth Amendment—

> prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, that is, by testing the tax not by what it was—a tax on income—but by a mistaken theory deduced from the origin or source of the income taxed. * * * We are here dealing solely with the restriction imposed by the Sixteenth Amendment on the right to resort to the source whence an income is derived in a case where there is power to tax for the purpose of taking the income tax out of the class of indirect to which it generically belongs and putting it in the class of direct to which it would not otherwise belong in order to subject it to the regulation of apportionment.

Substantially, then, the Court treats the Sixteenth Amendment as negativing for the future the decision in the *Pollock case* that a tax on income from property should be regarded as a tax on property. Congress might even under that decision have

taxed income from property, if apportioned. The Court does not, however, apply the Sixteenth Amendment literally. It does not concede that that Amendment authorizes Congress to reach through an income tax sources of revenue which might not have been reached in any manner whatever prior to the Sixteenth Amendment. On this point are the decisions in *Evans* v. *Gore*, 253 U. S. 245, and *Gillespie* v. *Oklahoma*, 257 U. S. 501, the reason for which is misstated in the plaintiff's brief. The Sixteenth Amendment, it has been decided, does not authorize Congress to tax all incomes, but it does declare that a tax on the income from property shall not be regarded as a tax upon property.

The income of the plaintiff *as a citizen of the United States* was a proper subject of taxation by Congress and no proper interpretation of the Sixteenth Amendment will permit him to escape his just burden of defraying the expenses of a Government, to which he owes allegiance, and from which he receives protection in his rights as such citizen, merely because the property producing the income is not situated within the United States. All taxes are *personal* obligations of the citizen, even though measured in amount by his property or the income thereof. Taxes are not imposed upon property as such but upon its owner.

The contention of the plaintiff that taxing his income is not authorized by the Sixteenth Amendment, if well founded, would apply equally to a citizen

residing in the United States, and deriving his entire income from sources outside of the United States; and yet unquestionably Congress has such power of taxation over citizens residing within the United States. How can the duty of the citizen to support the government which protects him depend upon his place of residence? Wherein does the Constitution impose such a limitation upon the power of Congress to tax?

The Sixteenth Amendment made it immaterial whether income were or were not derived from property. It follows, then, since the plaintiff is subject to the jurisdiction of the United States, his income is a proper object of taxation by Congress regardless of the source from which it is derived.

III.

The courts have clearly indicated that Congress may tax the income of one who is subject to its jurisdiction, although that income is derived from sources outside of the United States.

The plaintiff further contends that "the power of taxation, inherent in sovereignty, is limited to the territorial jurisdiction of the sovereign." Upon this point, as will be shown, decisions relating to the taxing powers of the States are not pertinent. The question now before the Court is whether a national sovereign such as the United States may impose taxes upon its citizens with respect to income derived from sources outside of the territorial borders of the country.

In *Nevada Bank* v. *Sedgwick*, 104 U. S. 111, this Court decided that the Federal tax laws applied to capital of a State bank which was invested in foreign countries; and in *Memphis & Charleston R. Co.* v. *United States*, 108 U. S. 228, it held that a railroad company was not exempt from an income tax levied on dividends during the Civil War, although the income was earned, the dividends declared, and the payments made within the Confederate lines. In the latter case the Court said (p. 234):

> To our minds it is a matter of no importance that the income came from property which was within Confederate territory. The property, although within the Confederate lines, belonged to the company, and the income derived from its use was actually paid out by the company in dividends to stockholders and to discharge the corporate debts for interest. We think it would hardly be claimed that if a private individual, living in one of the loyal States during the war, derived an income which he actually reduced to possession, or used in the payment of debts, from property in Confederate territory, he would be exempt from the income tax imposed on him by the internal-revenue laws, because of the source from which his income was derived; and if he would not be, it is difficult to see how this corporation is. In both cases the tax is in legal effect on the income of persons subject to the actual dominion and control of the United States. The tax is payable by the person because of his income, according to its amount, and without any reference to the way in which it was obtained.

The authorities are summarized in Ruling Case Law, which says broadly (vol. 26, pp. 85, 86):

> The United States may tax the income of one of its own citizens although he is a resident of a foreign country and the income is derived from business carried on outside the United States.

That textbook calls attention to the facts that—

> In 1861, 1862, and 1864 income taxes were levied upon all persons resident within the United States and upon all citizens of the United States resident abroad, the latter being taxed at a higher rate than residents of the United States. * * * In 1866 Congress imposed an income tax upon nonresident aliens holding bonds of corporations established within the United States * * * and the validity of this tax was sustained. (*United States* v. *Erie R. Co.*, 106 U. S. 327.)

It then dwells upon the broad scope of the income tax acts of 1913 and subsequent years, under which taxes such as the one now before the Court were levied, and declares that they do not appear "to violate any principle of either international or of constitutional law."

In a series of cases in which this Court considered the Tariff Act of 1909 imposing a tax upon the use of foreign-built pleasure vessels owned or chartered for more than six months by a resident or citizen of the United States, the Court held that the terms of the statute did not apply to the use of foreign-built boats by citizens of the United States who had permanent

residences and domiciles abroad, but, as it pointed out in *United States* v. *Goelet*, 232 U. S. 293, 296, it did this without—

> *in the slightest degree questioning that there was power to impose the excise duty on the citizen owning a foreign-built yacht wholly irrespective of the fact that he was permanently domiciled in a foreign country.* [Italics ours.]

In *United States* v. *Bennett*, 232 U. S. 299, however, it decided that the statute in question applied to a foreign-built yacht which had a permanent situs within the jurisdiction of the Republic of France, pointing out very clearly that the limitations upon the taxing powers of the States do not apply to the Federal Government. (See pp. 305–307.)

In *Porto Rico Coal Co.* v. *Edwards*, 275 Fed. 104, the court held that the Revenue Acts of 1917 and 1918 applied to a New York corporation which derived substantially all its income from Porto Rico, did all its business, owned all its property, and kept its books of account on that island, saying (p. 108):

> For the purposes of the taxation of its income it is quite indifferent from where that income derives. If it wishes to speak with the mouth of a Porto Rican, let it put on the proper mask; it can not take on a new personality with every territory from which it draws its profit.

These cases show that Congress may tax the incomes of nonresident citizens. In *Nevada Bank* v. *Sedgwick* capital invested abroad was taxed; and in

Memphis & Charleston R. Co. v. *United States* an income tax law was applied to income earned within the Confederate lines. In the yacht cases this Court took pains to point out that it did not deny that Congress might tax nonresident citizens on the use of property in another country. In the *Porto Rico Coal case* the fact that the corporation was a domestic corporation gave Congress the right to tax its income derived from sources outside of the United States.

The plaintiff, as a citizen of the United States, although residing outside its borders, is as much subject to the jurisdiction of the United States as though he resided within its territorial borders. Clearly, then, he is subject to any valid tax Congress may see fit to impose upon him, and since the tax in question is not within any of the limitations of the taxing power of Congress, the tax was lawfully assessed and collected from the plaintiff.

IV.

Decisions relating to State legislation taxing persons or property beyond the borders of those States are inapplicable.

In *United States* v. *Bennett*, 232 U. S. 299, 306, this Court said:

> It is impossible for one State to reach out and tax property in another without violating the Constitution, for where the power of the one ends the authority of the other begins. *But this has no application to the Government of the United States so far as its admitted taxing*

power is concerned. * * * Because the limitations of the Constitution are barriers bordering the States and preventing them from transcending the limits of their authority and thus destroying the rights of other States and at the same time saving their rights from destruction by the other States, in other words of maintaining and preserving the rights of all the States, *affords no ground for constructing an imaginary constitutional barrier around the exterior confines of the United States for the purpose of shutting that government off from the exertion of powers which inherently belong to it by virtue of its sovereignty.* But it is said in the decided cases relied upon, the principle which was announced was that the power to tax was limited by the capacity of the taxing government to afford that benefit and protection which is the true basis of the right to tax and which causes, therefore, taxation where such capacity to confer benefit and afford protection does not exist to be a mere arbitrary and unwarranted burden. But here again the confusion of thought consists in mistaking the scope and extent of the sovereign power of the United States as a nation and its relation to its citizens and their relations to it. *It presumes that government does not by its very nature benefit the citizen and his property wherever found.* Indeed, the argument, while holding on to citizenship, belittles and destroys its advantages and blessings by denying the possession by government of an essential power required to make citizenship completely beneficial.

The question had been discussed by Circuit Judge Noyes in the earlier case of *United States* v. *Billings*, 190 Fed. 359, 367, 368, and the same conclusion had been reached.

In the instant case the District Court pointed out important differences between the relation of a State to its nonresident citizens and that of the United States to its nonresident citizens (R. 23):

> One of our American States has little or nothing it can give to one of its citizens who takes up his residence beyond its borders. * * * On the other hand, he may demand the protection of the United States, and often does. To a somewhat indefinable extent, he is entitled to it. To be in the position to afford it, the Government must maintain diplomatic and consular representatives abroad, and keep up land and sea forces. In easily conceivable cases, the attempt to assert his rights may involve his country in the expenditure of billions of dollars and hundreds of thousands of lives. If he wishes to retain a citizenship which may cost his native land so dearly, it is not altogether unreasonable to require him to contribute to its support. For nearly sixty years Congress has thought that he should. Textwriters of high authority here and abroad have assumed that he may be lawfully called upon to do so.

The authorities cited by the plaintiff on this point are distinguishable.

Thus Mr. Cooley, quoted by plaintiff, is expressly dealing with the authority of a State or municipality.

He is not dealing with the United States or the powers of the United States. The cases which he cites are limited to State activities, not to national relations.

McCulloch v. *Maryland*, 4 Wheat. 316, deals with a State tax upon the Federal Bank. It has nothing to do with a Federal tax. Chief Justice Marshall is quoted as saying (p. 429):

> All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation.

We accept the statement as sound; but it does not aid the plaintiff, for the sovereign power of the United States extends to him.

United States v. *Rice*, 4 Wheat. 246, is not in point. It involved the imposition of an *import tax* by the United States upon goods brought into territory which was within the exclusive possession of the British Government. Import taxes relate to goods which are brought into the territory of the sovereign who imposes the duty. The Court decided that the import tax laws of the United States were not in operation in Castine, Maine, during the British occupation. But the case has no bearing upon income tax legislation, which is a purely personal obligation of the citizen.

In *St. Louis* v. *Ferry Company*, 11 Wall. 423, the Court decided that a ferryboat did not come within the territorial jurisdiction of the city of St. Louis

simply by contact with a ferry dock in that city. Here again this Court was merely dealing with the relations between the citizens of the several States.

Dobbins v. *Commissioners of Erie Co.*, 16 Pet. 435, involved simply the question whether a State might tax an officer of the United States upon his salary as such officer. *Maguire* v. *Trefry*, 253 U. S. 12, simply held that the State of Massachusetts could tax an income received by a beneficiary of a trust, if the beneficiary were a resident of Massachusetts and even though the trust was created by and administered under the laws of another State. This court affirmed the holding of the Massachusetts Court (230 Mass. 503), wherein that court said that an income tax is based on protection afforded to the recipient of the income.

V.

The jurisdiction of a national sovereign over its subjects is not confined to its territorial domain.

The public ships of a sovereign are subject to its laws wherever they may be. (Hyde, International Law, I, 435–446.) Its merchant ships are under its jurisdiction even while on the high seas. (Hyde, I, 423.) Its subjects who turn pirate are always subject to its jurisdiction. (Hyde, I, 410–412.) Treason may be punished no matter where the treasonable acts have occurred. (35 Henry VIII, c. 2; Criminal Code, sec. 1.) This is also true of conspiracy (*United States* v. *Bowman*, 260 U. S. 94); of cannibalism (*Regina* v. *Dudley*, 15 Cox C. C. 624); and by English

law it is true of offenses by Crown officials. (11 William III, c. 12; 42 Geo. III, c. 85, sec. 1.) Subjects who go to uncivilized countries take their national law with them. (Hyde, *supra*, I, 451.) Our Criminal Code (secs. 308, 309) forbids the sale of arms, liquors, or opium to the aboriginal natives of Pacific islands which are not in the possession of or under the protection of any civilized power; and an act of Congress (March 3, 1915, c. 74, secs. 1–13, 38 Stat. 817) regulates the practice of pharmacy and the sale of poisons in consular districts in China. Under treaties the United States has established consular courts for American citizens in several countries. So also, personal representatives of a sovereign, members of the diplomatic corps, carry their national law with them, and they are immune from the operation of the laws of the country to which they are sent. (Hyde, I, 746–763.)

In all of these cases, because of the allegiance which is owed by all of its citizens, a sovereign may exercise jurisdiction over its own citizens even when they are beyond its territorial domain. (Hyde, I, 424.) It is, therefore, clear that Congress may control the activities of American citizens who are residing abroad, and may tax their incomes.

Counsel for the plaintiff urge that the imposition of such a tax upon him would be subversive of the sovereignty of Mexico. The rules of international law, however, indicate that there is no subversion of the sovereignty of the country when a resident alien obeys the command of his own national sovereign,

unless the command of his sovereign conflicts with the command of the local sovereign. Counsel have been unable to find any such conflict existing between the laws of Mexico and the income tax law which is here involved.

VI.

The leading text writers upon international law concede that a national sovereign has the power to impose taxes upon its nonresident citizens regardless of the sources from which such incomes are derived.

Oppenheim (International Law, I, p. 195) points out that—

> The Law of Nations does not prevent a State from exercising jurisdiction over its subjects traveling or residing abroad, since they remain under its personal supremacy.

Bar (International Law, English translation by G. R. Gillespie, 2d ed., p. 247) says:

> Taxes, which fall directly on persons as such, will in the present day be more or less of the nature of income tax, and the first question that must be considered is whether in this matter the domicile or the nationality of the person is to rule. *On principles of public law, no objection can be taken to the state taxing its citizens, who are living in a foreign country, at its own discretion.* [Italics ours.]

Story (Conflict of Laws, 7th ed., pp. 21, 22, 682) says:

> Although the laws of a nation have no direct binding force or effect, except upon persons within its own territories, yet that every

> nation has a right to bind its own subjects by its own laws in every other place. * * * Every nation has hitherto assumed it as clear that it possesses the right to regulate and govern its own native-born subjects everywhere, and consequently, that its laws extend to, and bind such subjects at all times, and in all places. * * *
>
> Nations generally assert a claim to regulate the rights and duties and obligations and acts of their own citizens, wherever they may be domiciled. And so far as these rights, duties, obligations, and acts afterward come under the cognizance of the tribunals of the sovereign power of their own country, either for enforcement or for protection or for remedy, there may be no just ground to exclude this claim.

Westlake (International Law, I, pp. 206, 208) says:

> Since a tie between a state and its nationals is a personal one, it is not broken by geographical distance. * * * When the nationals of one state are in the territory of another, whether resident there or for a transient purpose, the authority of the former over them can still be exercised, not by action on the foreign soil, for any such action would be usurpation of the territorial sovereignty of that soil, but by enacting penalties to be enforced on the return of the culprit to its own territory or fines to be levied upon the property which they may have there.

Bar (*ubi supra*, pp. 111, 112) declares:

> It is obvious that certain extraterritorial effects must attend domicile and nationality;

> were this not the case the tie between the state and the persons who belong to it would be undone so soon as its territorial limits were passed, and the composition of the state, so far as its subjects were concerned, would depend at any moment on accident. * * * Apart from actual presence in the territory, there exists a certain attachment, and in connection with it a certain loyalty of the individual to the state, and of the state to the individual. The state must protect the individual who belongs to it even in a foreign country, but at the same time may prefer certain claims against him, e. g., the claim for service in her defense * * *.

Hyde (International Law, I, p. 362 and footnote on p. 362) says:

> It must be clear that the right of the territorial sovereign to impose a personal tax upon an individual depends upon the intimacy and closeness of the relationship that has been established between itself and him. Internationally, a sufficient relationship always exists between the state and its national, and that regardless of his residence. * * *
>
> Thus no international problem arises if a state endeavors to tax personally a nonresident national and to collect what is levied against him out of his property found within its territory. In case no such property is there to be found, all diplomatic protection may be withheld from such a national who declines to pay what is assessed against him.

Webster (The Law of Citizenship, 1891, pp. 167, 168) says:

> A state has the right to levy a tax on its citizens resident abroad. The collection of such a tax is difficult. The authorities of the foreign state in which the citizens reside cannot be called upon to make the collection, nor is there any power to enforce them. This, however, does not prevent notice to such citizens residing abroad that such a tax is due and is to be paid by them to the authorities of their country. Bluntschli Voelker Recht, paragraph 376.

The payment of an income tax by a nonresident citizen is looked upon as *prima facie* evidence of citizenship. The failure to pay such an income tax is, *inter alia*, of considerable weight in determining that the nonresident citizen has given up his allegiance to the United States. (*E. M. Borchard, Diplomatic Protection of Citizens Abroad*, pp. 694–697, 706, 728 *et seq.;* Mr. Fish, Secretary of State, to Mr. MacVeagh, December 13, 1870, *Foreign Relations, 1871*, pp. 887–888; *Murray* v. *The Schooner Charming Betsy*, 2 Cranch, 64, 120.

The plaintiff contends that citizenship of a native American is neither property nor a privilege granted by Congress, and therefore can not afford any basis for the tax in the instant case. Whatever may be the source from which citizenship is derived, citizenship connotes allegiance, and it is by reason of this allegiance that an income tax can be imposed upon a nonresident, nondomiciled citizen.

As Mr. Chief Justice Waite pointed out in *Minor* v. *Happersett*, 21 Wall. 162, 166, a citizen owes allegiance to his nation and is entitled to its protection.

> Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.

So long as the plaintiff remains a citizen of the United States he may look to this country for protection whenever his rights as a citizen are invaded. This country once waged a war with Mexico at the expense of many hundred millions of dollars simply because of wrongs done to our citizens in that country. Our last war—the greatest in history involving losses of at least thirty billions of dollars to our Government—was fought, at least primarily, to defend the rights of our nationals to traverse the high seas. Because of the protection which our Government thus affords, because of the allegiance which is due to it, the United States may properly exact of the plaintiff his just portion of the burden of sustaining the Government.

Whether such a tax may or may not be easily collected has no bearing whatever upon its validity.

VII.

The imposition of the tax is not in derogation of any rights of the plaintiff under the first ten Amendments.

If but for the first ten Amendments Congress has power to impose such a tax as the one here involved, nothing in those Amendments renders it unconstitutional. (*Brushaber* v. *Union Pacific R. Co.*, 240 U. S. 1, 24.)

The plaintiff does not show that, as against himself, the tax has been collected in an unconstitutional manner or that he is being threatened with its collection in an unconstitutional manner. He has paid the tax and is now seeking by an appropriate procedure to recover the amount which he has paid. He can not claim that he is denied due process of law. Nor may he properly ask this Court to pass upon the rights of other persons who have not paid their taxes and are not parties to this case.

As to his contention that "taxation without representation is tyranny," it is sufficient to reply, as this Court said in *Heald* v. *District of Columbia*, 259 U. S. 114, 124, that—

> There is no constitutional provision which so limits the power of Congress that taxes can be imposed only on those who have political representation.

It may be added that if he returns to this country, he has the right to qualify as an elector and be taxed by his representatives in Congress.

VIII.

The Revenue Act of 1921 applies to the plaintiff.

The tax now in controversy was imposed under the Revenue Act of 1921, which provides by section 210 (42 Stat. 227, 233):

> That, in lieu of the tax imposed by Section 210 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year upon the net income of every individual

> a normal tax of 8 per centum of the amount of the net income in excess of the credits provided in Section 216: *Provided*, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum.

Regulations 62, promulgated by the Commissioner of Internal Revenue under the Revenue Act of 1921, provides in Article 3:

> Citizens of the United States except those entitled to the benefits of section 262 * * * wherever resident, are liable to the tax. It makes no difference that they may own no assets within the United States and may receive no income from sources within the United States. Every resident alien individual is liable to the tax, even though his income is wholly from sources outside the United States. Every nonresident alien individual is liable to the tax on his income from sources within the United States.

In defining who is a citizen of the United States, Article 4 provides:

> An individual born in the United States subject to its jurisdiction, of either citizen or alien parents, who has long since moved to a foreign country and established a domicile there, but who has neither been naturalized in or taken an oath of allegiance to that or any other foreign country, is still a citizen of the United States.

The plaintiff's bill impliedly admits that the statute purports to apply to him and simply challenges

the power of Congress to impose such a tax. His brief, however, contends that the tax upon him is not within the purview of the statute.

The Government submits that the statute clearly shows the intention of Congress that, except as otherwise indicated, *every individual* to whom the taxing power of the United States extends shall be taxed; that certain provisions apply to every citizen *or* resident of the United States, while other provisions apply to those who are *neither* citizens or residents of this country. The plaintiff is a citizen although not a resident.

It will be observed that there is fixed a normal tax of 8 per cent upon every individual, with a modification in favor of a citizen or resident; and that such citizen or resident is to pay a tax of 4 per cent upon his net income. The rate of 8 per cent thus applies only to nonresident aliens; and *nonresident aliens are doubtless charged a higher rate because as to them and as to them alone is all income from sources outside of the United States excluded from the computation.* (Secs. 113 (c), 117.)

The statute then refers to those who are citizens *or* residents. Congress clearly thought that it was not sufficient to refer merely to residents, although all resident citizens would have been included under that designation. Congress, therefore, must have intended to include both resident and non-resident citizens under the term "citizens."

The different tax upon nonresident aliens and the necessity for express exceptions as to them show

that the broad terms as to the taxation of citizens or residents apply to all citizens at home and abroad and to all residents and apply to incomes of citizens or residents regardless of whether they are derived from sources within the United States or from sources in other countries. Only under the exceptional circumstances set forth in section 262 (42 Stat. 271) is any part of the income of a citizen from sources without the United States excluded from the computation, and the plaintiff does not come within any of those exceptions.

The statute, therefore, applies to the incomes of nonresident citizens even though those incomes are derived from sources outside of the United States.

JAMES M. BECK,
Solicitor General.

FEBRUARY, 1924.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1923.

No. 220.

GEORGE W. COOK, Plaintiff in Error,

vs.

GALEN L. TAIT, United States Collector of Internal Revenue for the District of Maryland.

In Error to the District Court of the United States for the District of Maryland.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

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REPLY BRIEF FOR PLAINTIFF IN ERROR.

I.

Section 210 of the Revenue Act of 1921 is as follows:

> "Sec. 210. That, in lieu of the tax imposed by Section 210 of the Revenue Act of 1918, there shall be levied, collected and paid for each tax-

able year *upon the net income* of every individual a normal tax of 8 per centum of the amount of the net income in excess of the credits provided in Section 216: *Provided, that in the case of a citizen or resident of the United States* the rate upon the first $4,000 of such excess amount shall be 4 per centum."

The act lays a tax upon the income.

The learned Solicitor-General is driven to take the position in his brief, first, that the income tax is merely a tax upon the person of the plaintiff in error because of his citizenship and not on any property right of his; and, second, that the person of the plaintiff in error is within the jurisdiction of the United States for purpose of taxation, and therefore the tax must be sustained. In assuming the first of these two positions, the Solicitor-General must be taken to have admitted that if the tax is upon the property rights of the plaintiff in error, the tax must fail.

The Solicitor-General has not cited any cases in point on either of these two propositions. This Court is asked to overturn a hitherto undisputed rule of law and unbroken line of authorities establishing that the tax is not a mere tax upon the individual. It is clear both under the terms of the act itself and under the decisions of this Court that a property right is

the object of this tax, namely, the income taxed and the right to receive it, realized in the shape of income.

As was said by Mr. Justice Wayne, in Dobbins v. the Erie County Commissioners, 16 Pet. 435, speaking of a general income tax:

> "Taxes regard the persons of men only because of their goods. The goods then are taxed and not the person" (16 Pet., l. c. 446).

Mr. Justice Swayne, in Springer v. United States, 102 U. S. 586, speaking of the federal income tax under the Act of July 1, 1862, said:

> "It is not a tax on the '*whole* * * * *personal estate*' of the individual, but only on his income, gains and profits during a year which may have been but a small part of his *personal estate*, and in most cases would have been so" (102 U. S., l. c. 598). (Italics ours.)

The Attorney-General of the United States, in his argument in favor of the tax in the case of Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, as reported on page 503, in speaking of the Income Tax Law of 1894, said:

> "The whole scope and tenor of the statute show the object of the contemplated tax to be *personal property* and nothing else."

And in the opinion of the Court in the Pollock case, supra, Mr. Chief Justice Fuller said of the same tax:

> "This law taxes the income received from land and the growth or produce of the land" (157 U. S., l. c. 581).

The Pollock case is best known by reason of having decided that an income tax upon the income from real estate and personal property is a direct tax upon the real estate and upon the personal property; but before that result could be arrived at the Court first decided that it was a tax upon the income and not upon the individual. And, on the latter proposition, we respectfully submit, that decision has never been questioned until the learned Solicitor-General questioned it in this case.

The late Mr. Chief Justice White, in the case of Brushaber v. The Union Pacific Railroad Company, 240 U. S. 1, in commenting on the Pollock case, said that that case did not question at all that in common understanding an income tax was direct on income (l. c. 16). And further, on page 18, he said that the tax is upon the income upon which it directly operates, and again, on page 19, speaking of the purpose of the Sixteenth Amendment:

> "That the purpose was not to change the existing interpretation except to the extent neces-

> sary to accomplish the result intended, that is, the prevention of the resort to the sources from which a tax income was derived in order to cause a *direct tax on the income* to be a direct tax on the source itself." (Italics ours.)

And in Maguire v. Trefry, 253 U. S., page 16, Mr. Justice Day said of the income tax statute of Massachusetts:

> "It is true that the legal title of the property is held by the trustee in Pennsylvania. But it is so held for the benefit of the beneficiary of the trust, and such beneficiary has an equitable right, title, and interest distinct from its legal ownership. The legal ownership holds the direct and absolute dominion over the property, in view of the law; but the income, profits, or benefits thereof in his hands belong wholly or in part to others" (2 Story Eq., 11th Ed., Sec. 964). *"It is this property right belonging to the beneficiary realized in the shape of income,* which is the subject-matter of the tax under the statute of Massachusetts" (253 U. S., l. c. 16 and 17).

The act in terms taxes the income and it is only an income tax which the amendment authorizes to be levied without apportionment, not a mere tax upon the individual. As was said by the Solicitor-General in his argument in favor of the corporation

tax of 1909 in the case of Flint v. Stone Tracy Company, 220 U. S. 107:

> "The nature of the tax is determined by its subject matter * * * that upon which it is laid."

Applying the same test here the tax is upon the income.

Other parts of the act itself bear out this interpretation. For example, the act taxes the income of the estate of a decedent during administration; it taxes the income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interest or held for future distribution under the terms of a will or trust. The petition contended for by the Solicitor-General in this case would prevent the United States from taxing the income of nonresident aliens; for we do not suppose that he would go so far as to contend that the United States may levy a tax upon a nonresident alien as an individual, nor upon unborn persons as individuals.

The Government cites the Brushaber and the Stanton cases as authorities for the proposition that since the adoption of the amendment, the income tax has become an indirect tax and that therefore it is a tax upon the individual. But such is not the hold-

ing of the Brushaber and Stanton cases. On the contrary, they are authorities for the plaintiff in error that the tax is laid upon the income, which is a property right. In fact, these cases hold that the income tax is just what it has always been, *a tax upon the income*, and that the sole purpose of the amendment was to prevent an apportionment between the states because of the source from which the income was derived. To assert that Mr. Chief Justice White in those cases said that the effect of the amendment was to make the tax merely one upon the individual, as such, is to put into the opinion what is not there.

The Government's assumption that all indirect taxes are levied merely upon individuals is not borne out by the authorities but directly contrary thereto. We have already pointed out in the original brief that many indirect taxes, to wit, inheritance and succession taxes, franchise taxes and others are taxes upon property rights. We will not repeat these authorities here but respectfully refer the Court to our original brief herein.

Nor does the fact that the tax may be a personal charge make it a tax upon the individual. All taxes are paid by some person. Taxes upon the person, as such, are capitation taxes, and are not freed from apportionment under the Sixteenth Amendment; taxes upon property, as such, or upon individuals because

of their property are property taxes. By the statutes of many states, direct ad valorem taxes levied on real estate are made the personal obligation of the owner, but that fact does not change the nature of the tax, nor make it a tax upon the individual owner who is rendered liable therefor.

As was said by Mr. Chief Justice Fuller in the Pollock case:

> "It has always been considered that a tax upon real estate *eo nomine* or upon *its owners in respect thereto* is a direct tax in the meaning of the Constitution" (157 U. S., l. c. 580).

That Mr. Chief Justice White recognized that the Sixteenth Amendment did not change the former construction by the Supreme Court making the tax a "direct tax," so far as the "income" itself is concerned—and, therefore, a tax on property, or a property right, as contrasted with a tax on a "person" as an individual, is made clear by the language of the learned Chief Justice himself (240 U. S., l. c. 18 and 19).

Very well, then; here we are again! The Pollock case is still the law, and more than that it is now firmly embedded in the Constitution, as stated by Mr. Chief Justice White, who also declared the tax to be "direct" upon the income. So we will stop the "direct" element at the "income," without bothering about the source; but the "power" of taxation

is unchanged, and must be so interpreted under the Brushaber case.

The construction given to the Sixteenth Amendment, in the light of the Pollock case, and the interpretation of the Pollock case by the Supreme Court since the Sixteenth Amendment and since the opinion by Mr. Chief Justice White in the Brushaber case, is clearly to the effect that the principles of the Pollock case are to be applied just as much since the Sixteenth Amendment, and since the Brushaber opinion, as before. And see later cases: Eisner v. Macomber, 252 U. S., l. c. 206; also the concurring opinion in Citizens National Bank v. Durr, 257 U. S., l. c. 110, by Mr. Justice Holmes, Mr. Justice Van Devanter and Mr. Justice McReynolds (Nov. 2, 1921), which specifically approve the rule stated in the Pollock case.

Nothing in the law is changed, except the necessity for the apportionment. Direct taxes are still direct taxes, as fully as if the Sixteenth Amendment had never been adopted, even if it is not necessary to call them so in order to collect them. Furthermore, the construction placed on the Brushaber case in this argument by us is fully sustained by the majority opinion written by Mr. Justice Pitney, in Eisner v. Macomber, 252 U. S., l. c. 205, where it is said (referring to the Sixteenth Amendment):

"As repeatedly held, this did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income (Brushaber v. Union P. R. Co., 240 U. S. 1, 17-19; Stanton v. Baltic Min. Co., 240 U. S. 103, 112, et seq.; William E. Peck & Co. v. Lowe, 247 U. S. 165, 172, 173)."

Further convincing authority as to the continuing force of the Pollock case and the unity of it with the cases decided since the Sixteenth Amendment is found in the opinion by Mr. Justice Holmes, in Gillespie v. Oklahoma, 257 U. S. 501, Jan. 30, 1922, and especially the quotation beginning (p. 505):

"(2) In cases where the principal is absolutely immune from interference, an inquiry is allowed into the sources from which net income is derived, and if a part of it comes from such a source, the tax is pro tanto void (Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, a rule lately illustrated by Evans v. Gore, 253 U. S. 245, and applied in a case somewhat like the present by the Supreme Court of Hawaii, Oahu Ry. & Land Co. v. Pratt, 14 Hawaii 126). Whether this property could be taxed in any other form or not, it cannot be reached as profits or income from leases such as those before us. The same considerations that invalidate a tax upon the leases invalidate a tax upon the profits of the leases; and, stopping short of theoretical pos-

> sibilities, a tax upon such profits is a direct hamper upon the effort of the United States to make the best terms that it can for its wards (Weston v. Charleston, 2 Pet. 449, 468, 7 L. ed. 481)."

In distinguishing the juridical meaning of "taxable person," the case of Dobbins v. The Erie County Commissioners, 16 Pet. 435, is so apt, and the contention made by the State of Pennsylvania so similar to that made by the Government in this case, that we deem it worth quoting here. The argument made for the tax by Mr. Penrose, as reported at page 438, is as follows:

> "Captain Dobbins was a 'taxable person,' a citizen of Erie County, who enjoyed the privilege of a citizen, and the protection of the state government. He was clearly, as such, liable to taxation.
>
> "In determining the amount of the tax the sovereign state had a right to say, arbitrarily, that he should pay so much, or, which is more just, to ascertain his income, and, by rating that, fix a tax proportioned to it."

Mr. Justice Wayne, however, in the opinion of the Court answered that argument in the following words:

> "It will not do to say, as it was said in argument, that though the language of the act may

import that offices and posts of profit were taxable, that it was the citizen who holds the office whom the law intended to tax, and that it was a burden he was bound to bear in return for the privileges enjoyed, and the protection received from government; and, then, that the liability to pay the tax was a personal charge, because the person upon whom it was assessed was a taxable person.

"The first answer to be given to these suggestions is that the tax is to be levied upon a valuation of the income of the office. But, besides, the obligation upon persons to pay taxes is mistaken, and the sense in which a tax is a personal charge is misunderstood. The foundation of the obligation to pay taxes is not the privileges enjoyed or the protection given to a citizen by government, though the payment of taxes gives a right to protection. Both are enjoyed, as well by those members of a state who do not, because they are not able to pay taxes, as by those who are able and do pay them. Married women and children have privileges and protection, but they are not assessed, unless they have goods or property separate from the heads of families. * * * And the only sense in which a tax is a personal charge is that it is assessed upon personal estate and the profits of labor and industry. It is called a personal charge to distinguish such a tax from the tax upon lands and tenenments which are enforced without any regard to the persons who are the owners. Taxes are never assessed unless it be

> a capitation tax upon persons as persons, but upon them on account of their goods and the profits made upon professions, trades and occupations. They are so imposed because public revenue can only be supplied by assessments upon the goods of individuals—'comprehending under the word "goods" all the estate and effects which everyone hath, of whatsoever sort they be. Taxes regard the persons of men only because of their goods.' The goods then are taxed and not the person" (16 Pet., l. c. 445 and 446).

Taxes upon individuals, as such, are capitation taxes. Counsel for plaintiff in error have never before heard of an indirect tax on a person as such. A poll tax is a direct tax (Const. U. S., Art. I, Sec. 9, Sub. 4); and is not included in the Sixteenth Amendment.

II.

The second part of the Government's position, viz., that the tax is upon the plaintiff in error as an individual and that his person is subject to the jurisdiction of the United States for purpose of taxation is not sustained by any authorities in point. The authorities cited by the Solicitor-General consisted of cases like Nevada Bank v. Sedgwick, 104 U. S. 111; Memphis and Charleston Railroad Company v. the United States, 104 U. S. 228; United States v. Bennett, 232 U. S. 299, and Porto Rico Coal Company

v. Edwards, 275 Fed. 104, in all of which cases the taxpayer was domiciled within the United States, and United States v. Bennett has no application to the case at bar, because not relating to income taxes which Mr. Chief Justice White himself, in the Brushaber case (240 U. S. 1, 18 and 19) said is a tax directly upon the income, and, therefore, is not upon a particular use, such as the use of foreign-built yachts.

The Solicitor-General also quotes the dictum in United States v. Goelet, 232 U. S. 293, which we have already discussed in our original brief, at page 45. The Solicitor-General also quotes from text writers on international law and from Ruling Case Law.

It is interesting to note that not a single case from this court is cited by these writers upon the point contended for here by the Government, and we confidently assert that there are none, for the Government, with its great resources of investigation and search, would surely have found them and cited them to this Court.

But this Court has decided in the leading case of United States v. Rice, 4 Wheat., page 247, that the United States cannot lawfully impose taxes upon its citizens domiciled within another sovereignty; and that so far as the taxing power is concerned such citizens only owe such taxes as the sovereign of the soil may choose to impose. And this, although the

Town of Castine was in the territory belonging to the United States and only temporarily in the possession of great Britain. Mr. Justice Story said:

> "The laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors" (4 Wheat., l. c. 254).

Regarding the authors on international law quoted by the Government, the rule in this court is that the only international law which is recognized as part of our municipal law is to be found in the decisions of this Court. We submit that the case of United States v. Rice, supra, announces the rule applicable to the taxing power of the United States whatever may be the laws and practices of other nations.

We are not dealing with the law of crimes, nor with extra territorial extensions of sovereignty, such as is recognized to exist over the ships flying our flag; or over ambassadors, ministers or consuls; nor with extensions of sovereignty by treaty; nor with the war powers. We are not dealing with the relation between the United States and foreign nations or their nationals. In fact, we are not dealing with the United States as an international sovereign at all, but solely with its taxing power, and especially we

are dealing with that taxing power with relation to the property of the plaintiff in error located in Mexico.

The assertion of the Government that the plaintiff in error, as an individual, is within the jurisdiction of the United States, states a fiction.

The Government lays great stress upon the idea that the United States protects the plaintiff in error and, therefore, he should pay the tax. We have already covered this matter fully in our original brief, and shown that that is merely a political question, and that the Government has no legal duty to take any measures outside of its own boundaries.

The Government's proposition that the taxing power of the United States knows no limits other than those expressly mentioned in the Constitution is, we think, sufficiently answered in the authorities cited in our original brief at pages 42 and 43. Among the implied limitations is that the taxing power is limited to persons and property within the territorial jurisdiction because governmental jurisdiction in matters of taxation depends upon the power to enforce its mandates by action within its own borders; and in this regard the Fourteenth Amendment imposes no greater limitation upon the states than the fifth imposes upon the United States (Shaffer v. Carter, 252 U. S. 37, 54). This is a principle inherent in constitutional government.

III.

The Solicitor-General, in his brief, asserts that the question of statutory construction is an afterthought. In this the learned Solicitor-General is in error. That question was presented to the court below by the plaintiff, both by brief and oral argument. In any event, since this case comes directly by writ of error to the District Court, the whole case is before this Court and not merely the constitutional question (Towne v. Eisner, 245 U. S. 418).

The question of statutory construction is, we think, fully covered by our original brief, pages 51 to 57. The Government has not pointed out any express declaration of authority in the act to tax this plaintiff under the theory of taxation, and, therefore, the rule of construction announced in United States v. Goelet, 232 U. S. 293, applies.

IV.

The Solicitor-General in his brief has not answered the position taken by the plaintiff in error as to the taxes in violation of the Fifth Amendment. We are not questioning those authorities which state that that amendment is not an independent limitation on the taxing power, but we do assert that any attempt to impose a tax, otherwise unlawful, is a mere ex-

tortion under the guise of taxation, and is in violation of the Fifth Amendment, regardless of the form of procedure adopted by the Government for its enforcement. If the tax is lawful the Government can adopt summary methods for its collection; if it is unlawful, proceeding for its collection through the courts of law will not make it lawful. For brevity we refer the Court to the authorities cited on page 48 of our original brief.

V.

We submit that the points V and VI made by defendant in error are entirely lacking in authorities applicable to the case at bar.

In point V it is of no consequence here whether or not, or to what extent, limited or special sovereignty may be rightfully exercised over merchant ships, over piracy, or treason, or cannibalism, or the sale of arms, liquor or opium in the Pacific Islands, or the practice of pharmacy in consular districts in China, or the immunity of diplomatic officers from local laws.

The Solicitor-General cites no decisions in support even of those remote propositions except two, one a decision by the United States Supreme Court and the other by the British High Court of Justice (Q. B. D.).

It is hard to see what a conspiracy against the United States Government in a Government vessel on the high seas, or the conviction of murder for "cannibalism" under the admiralty jurisdiction of England, because three men in a boat adrift at sea killed and ate a boy, has to do with the "power" of the United States to impose income taxes on the property of the plaintiff in error located in Mexico.

It would seem as if the defendant in error, for want of sound law in his support, must have been driven to a similar plea to that used in the English "cannibal" case—"Necessity"—and it is hoped that his plea will meet with a similar fate here.

Point VI in the brief for the Government is as lacking in germane authorities as point V.

Not a single decision is cited with reference to taxation of any sort. The few text writers cited are mostly foreigners who make no pretense of writing concerning law under our Constitution. The American writer cited (pages 20 and 21 of the brief, Webster on Citizenship, pp, 167, 168), says immediately after the language quoted (p. 168):

> "A state cannot pass and enforce a law on aliens making them citizens contrary to their will, when within the state; no more can a state declare its citizens to be aliens *for reason of failure to pay an income tax when resident abroad. The rule is moral in effect, not absolute as a matter of law.*"

The reference to writings of administrative officers of the United States cited on page 21 of the Government's brief, to the general effect that payment on an income tax by a nonresident citizen is an affirmative evidence of citizenship, furnishes no authority for the proposition that the United States can compel him to pay an income tax, by denying him the rights of American citizenship, and thus forcibly expatriating him. For no such power resides in the United States, because the citizen only can "expatriate himself," and that only in the manner prescribed by statute (2 Fed. Stat. Ann., p. 122, sec. 2, 34 Stat. L. 1228).

The decision of the Supreme Court cited (Murray v. Charming Betsy, 2 Cranch. 64), an admiralty case of seizure of a vessel under the Nonintercourse Act, is more of an authority for the plaintiff in error than for the defendant in error; for in the opinion, Mr. Chief Justice Marshall says (l. c. 120):

> "The cases cited at bar, *and the arguments drawn from the general conduct of the United States on this interesting subject*, seem completely to establish the principle that *an American citizen may acquire, in a foreign country, the commercial privileges attached to his domicile, and be exempted from the operation of an act expressed in such general terms as that now under consideration.*"

Apply this doctrine to the case at bar!

Certainly the language of Mr. Chief Justice Waite in Minor v. Happersett, 21 Wall. 162, 166, as quoted by the Solicitor-General on page 22 of his brief, has nothing to do with our questions here, since that was merely an effort of a married woman to compel the registration of her name as a voter—in Missouri.

If the Solicitor-General is depending on the quotation from Story on the Conflict of Laws, found on pages 18 and 19 of his brief, it must be noted that no mention is made of taxing the property rights of citizens domiciled abroad (or of taxing individual citizens on their citizenship). But we, *e converso*, respectfully refer to another quotation from one of the pages cited by the Solicitor-General (Story, Conf. of Laws, p. 22):

> "Another maxim or proposition is, that *no state or nation can by its laws directly affect or bind property out of its own territory*, or bind persons not resident therein, whether they are natural-born subjects or others."

And to supplement, and for the purposes of this case, to complement, the proposition last quoted, we again respectfully recall attention to the language of that great jurist in the Castine case, when he was a Justice of this great Court (Opinion by Mr. Justice

Story, in U. S. v. Rice, 4 Wheat., l. c. 254), and to his concluding words (p. 255):

> "We think it too clear to require any aid from authority."

All of which is respectfully submitted,

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out the territorial jurisdiction of the United States and solely within the territorial jurisdiction of the Republic of Mexico.

A. This proposition involves solely the question of the power to levy the tax and not the mode of its exercise. *Veazie Bank* v. *Fenno*, 8 Wall. 533; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429; 158 U. S. 601; *Brushaber* v. *Union Pac. R. R. Co.*, 240 U. S. 1; *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103; *Eisner* v. *Macomber*, 252 U. S. 189; *Peck & Co.* v. *Lowe*, 247 U. S. 165; *Evans* v. *Gore*, 253 U. S. 245; *Nicol* v. *Ames*, 173 U. S. 509; *United States* v. *Phellis*, 257 U. S. 156.

B. The power of taxation, inherent in sovereignty, is limited to the territorial jurisdiction of the sovereign, and the attempt to impose a tax upon property, persons or business beyond that jurisdiction is void. I Cooley, Taxation, p. 249; *McCulloch* v. *Maryland*, 4 Wheat. 316; *United States* v. *Rice*, 4 Wheat. 247; *Loughborough* v. *Blake*, 5 Wheat. 317; *State Tax on Foreign-Held Bonds*, 15 Wall. 300; *Dewey* v. *Des Moines*, 173 U. S. 193; *De Lima* v. *Bidwell*, 182 U. S. 1; *United States* v. *Hayward*, 2 Gall. 485; *St. Louis* v. *The Ferry Co.*, 11 Wall. 423; *Tappan* v. *Merchants' National Bank*, 19 Wall. 490; *Louisville Ferry Co.* v. *Kentucky*, 188 U. S. 385; *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194.

(1) The subject of the tax is the right to the rents and profits from the property realized in the shape of income; this is a property right having its situs in the Republic of Mexico. *Dobbins* v. *Commissioners of Erie County*, 16 Pet. 435; *Maguire* v. *Trefry*, 253 U. S. 12; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429; 158 U. S. 601; *Brushaber* v. *Union Pac. R. R. Co.*, 240 U. S. 1; *Gillespie* v. *Oklahoma*, 257 U. S. 501; *Greiner* v. *Lewellyn*, 258 U. S. 384; *Eisner* v. *Macomber*, 252 U. S. 189; *Evans* v. *Gore*, 253 U. S. 245; Revenue Act of 1921, § 210; Sixteenth Amendment; *Nicol* v. *Ames*, 173 U. S. 509; *The Exchange*, 7 Cr. 116; *Selliger* v. *Kentucky*, 213 U. S. 200;

Union Refrigerator Transit Co. v. *Kentucky,* 199 U. S. 194; *Louisville Ferry Co.* v. *Kentucky,* 188 U. S. 385; *Thirty Hogsheads of Sugar* v. *Boyle,* 9 Cr. 191; *United States* v. *Rice,* 4 Wheat. 247; *Fleming* v. *Page,* 9 How. 603.

(2) The person of plaintiff in error is not within the jurisdiction of the United States for purposes of taxation. See authorities cited *supra,* under B(1).

(3) Citizenship of a native American is neither property nor a privilege granted by Congress and therefore cannot afford any basis for the tax in the instant case. *United States* v. *Rice,* 4 Wheat. 247; *Downes* v. *Bidwell,* 182 U. S. 282; *Collector* v. *Day,* 11 Wall. 113; *Louisville Ferry Co.* v. *Kentucky,* 188 U. S. 385; *Shaffer* v. *Carter,* 252 U. S. 37; Const., Art. I, § 8, par. 1; Art. I, § 2, cl. 3; Art. I, § 9, cl. 4; *Flint* v. *Stone Tracy Co.,* 220 U. S. 107; *Loan Association* v. *Topeka,* 20 Wall. 655; *Pollock* v. *Farmers' Loan & Trust Co.,* 157 U. S. 429; Moore, American Notes to Dicey on Conflict of Laws, pp. 783, 800.

C. The United States not having the power to impose the tax, its imposition and collection is a mere extortion under the guise of taxation and violates the rights of the plaintiff in error guaranteed him under the Fifth Amendment. *State Tax on Foreign-Held Bonds,* 15 Wall. 300; *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194; *Shaffer* v. *Carter,* 252 U. S. 37; *Dewey* v. *Des Moines,* 173 U. S. 193.

D. The tax is in violation of the natural and inherent rights of plaintiff in error and is contrary to the rights reserved—independently of citizenship—by the first ten amendments to the Constitution, and especially the Fifth, Ninth and Tenth Amendments. *Downes* v. *Bidwell,* 182 U. S. 282; *Fong Yue Ting* v. *United States,* 149 U. S. 715.

II. The tax assessed is not within the statute.

A. The statute does not contain express declaration of authority to impose the tax and will be strictly construed in favor of the taxpayer. Revenue Act, 1921, § 210, 42

Stat. 233; Revenue Act, 1913, § 2–A, Subdiv. 1, 38 Stat. 166; Revenue Act, 1916, § 1–A, 39 Stat. 756; Revenue Act, 1918, § 210, 40 Stat. 1057; *Mutual Benefit Life Ins. Co.* v. *Herold,* 198 Fed. 199; s. c., 201 Fed. 918; *Eidman* v. *Martinez,* 184 U. S. 578; *United States* v. *Goelet,* 232 U. S. 293.

B. The statute must be construed as including only property and persons within the constitutional power of Congress to reach, so as to keep the statute in harmony with the Constitution. *McCullough* v. *Virginia,* 172 U. S. 102; Sedgwick, Construction (Pomeroy), 2d ed., p. 206.

Mr. Solicitor General Beck for defendant in error.

I. The Constitution confers on Congress a broad power to lay and collect taxes.

Referring to this power, this Court said in the *License Tax Cases,* 5 Wall. 462: "It is given in the Constitution with only one exception and only two qualifications. Congress can not tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion."

The rule announced in these cases was restated and affirmed in *Pollock* v. *Farmers' Loan & Trust Co.,* 157 U. S. 429. To the same effect are *Nicol* v. *Ames,* 173 U. S. 509; *Knowlton* v. *Moore,* 178 U. S. 41; and *Flint* v. *Stone Tracy Co.,* 220 U. S. 107. See *Brushaber* v. *Union Pacific R. R. Co.,* 240 U. S. 1.

II. The tax imposed on the plaintiff is not unconstitutional because it applies to income from property outside of the United States.

This Court has decided (*Brushaber Case, supra*) that even before the adoption of the Sixteenth Amendment Congress might tax all property and the income from all property. *Stanton* v. *Baltic Mining Co.,* 240 U. S. 103.

All taxes are personal obligations of the citizen, even though measured in amount by his property or the income

thereof. Taxes are not imposed upon property as such but upon its owner.

The contention that taxing the income is not authorized by the Sixteenth Amendment, if well founded, would apply equally to a citizen residing in the United States, and deriving his entire income from sources outside of the United States; and yet unquestionably Congress has such power of taxation over citizens residing within the United States. How can the duty of the citizen to support the government which protects him depend upon his place of residence? Wherein does the Constitution impose such a limitation upon the power of Congress to tax?

The Sixteenth Amendment made it immaterial whether income were or were not derived from property.

III. The courts have clearly indicated that Congress may tax the income of one who is subject to its jurisdiction, although that income is derived from sources outside of the United States. *Nevada Bank* v. *Sedgwick,* 104 U. S. 111; *Memphis & Charleston R. R. Co.* v. *United States,* 108 U. S. 228; 26 R. C. L., pp. 85, 86; *United States* v. *Erie Ry. Co.,* 106 U. S. 327; *United States* v. *Goelet,* 232 U. S. 293; *United States* v. *Bennett,* 232 U. S. 299; *Porto Rico Coal Co.* v. *Edwards,* 275 Fed. 104.

IV. Decisions relating to state legislation taxing persons or property beyond the borders of those States are inapplicable. *United States* v. *Bennett, supra.*

V. The jurisdiction of a national sovereign over its subjects is not confined to its territorial domain. I Hyde, Int. Law, pp. 410–412, 423, 435–446. Treason may be punished no matter where the treasonable acts have occurred. 35 Henry VIII, c. 2; Criminal Code, § 1. This is also true of conspiracy, *United States* v. *Bowman,* 260 U. S. 94; of cannibalism, *Regina* v. *Dudley,* 15 Cox C. C. 624; and by English law it is true of offenses by Crown officials. 11 William III, c. 12; 42 Geo. III, c. 85, § 1. Subjects who go to uncivilized countries take their national law with

them. I Hyde, *supra*, p. 451. Our Criminal Code (§§ 308, 309) forbids the sale of arms, liquors, or opium to the aboriginal natives of Pacific islands which are not in the possession of or under the protection of any civilized power; and an act of Congress (March 3, 1915, c. 74, §§ 1–13, 38 Stat. 817) regulates the practice of pharmacy and the sale of poisons in consular districts in China. Under treaties the United States has established consular courts for American citizens in several countries. So also, personal representatives of a sovereign, members of the diplomatic corps, carry their national law with them, and they are immune from the operation of the laws of the country to which they are sent. I Hyde, *supra*, pp. 746–763.

Counsel for the plaintiff urge that the imposition of such a tax upon him would be subversive of the sovereignty of Mexico. The rules of international law, however, indicate that there is no subversion of the sovereignty of the country when a resident alien obeys the command of his own national sovereign, unless the command of his sovereign conflicts with the command of the local sovereign.

VI. The leading text writers upon international law concede that a national sovereign has the power to impose taxes upon its nonresident citizens regardless of the sources from which such incomes are derived. I Oppenheim, Int. Law, p. 195; Bar, Int. Law, 2d ed., p. 247; Story, Conflict of Laws, 7th ed., pp. 21, 22, 682; I Westlake, Int. Law, pp. 111, 112, 206, 208; I Hyde, Int. Law, p. 362; Webster, The Law of Citizenship, 1891, pp. 167, 168.

The payment of an income tax by a nonresident citizen is looked upon as *prima facie* evidence of citizenship. The failure to pay such an income tax is, *inter alia*, of considerable weight in determining that the nonresident citizen has given up his allegiance to the United States. Borchard, Diplomatic Protection of Citizens Abroad, pp. 694–697, 706, 728 *et seq.*; Mr. Fish, Secretary of State,

to Mr. MacVeagh, December 13, 1870, Foreign Relations, 1871, pp. 887–888; *The Charming Betsy*, 2 Cr. 64.

As pointed out in *Minor* v. *Happersett*, 21 Wall. 162, a citizen owes allegiance to his nation and is entitled to its protection.

VII. The imposition of the tax is not in derogation of any rights of the plaintiff under the first ten amendments. *Brushaber* v. *Union Pacific R. R. Co.*, 240 U. S. 1, 24; *Heald* v. *District of Columbia*, 259 U. S. 114, 124.

VIII. The Revenue Act of 1921 applies to the plaintiff.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Action by plaintiff in error, he will be referred to as plaintiff, to recover the sum of $298.34 as the first installment of an income tax paid, it is charged, under the threats and demands of Tait.

The tax was imposed under the Revenue Act of 1921, which provides by § 210 (42 Stat. 227, 233): "That, in lieu of the tax imposed by section 210 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 8 per centum of the amount of the net income in excess of the credits provided in section 216: *Provided*, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum." [1]

[1] The following regulation, No. 62, promulgated by the Commissioner of Internal Revenue under the Revenue Act of 1921, provides in Article 3: "Citizens of the United States except those entitled to the benefits of section 262 . . . wherever resident, are liable to the tax. It makes no difference that they may own no assets within the United States and may receive no income from sources within the United States. Every resident alien individual is liable to the tax, even though his income is wholly from sources outside the United States. Every nonresident alien individual is liable to the tax on his income from sources within the United States."

Plaintiff is a native citizen of the United States and was such when he took up his residence and became domiciled in the City of Mexico. A demand was made upon him by defendant in error, designated defendant, to make a return of his income for the purpose of taxation under the Revenue Laws of the United States. Plaintiff complied with the demand, but under protest, the income having been derived from property situated in the City of Mexico. A tax was assessed against him in the sum of $1,193.38, the first installment of which he paid, and for it, as we have said, this action was brought.

The question in the case, and which was presented by the demurrer to the declaration is, as expressed by plaintiff, whether Congress has power to impose a tax upon income received by a native citizen of the United States who, at the time the income was received, was permanently resident and domiciled in the City of Mexico, the income being from real and personal property located in Mexico.

Plaintiff assigns against the power not only his rights under the Constitution of the United States but under international law, and in support of the assignments cites many cases. It will be observed that the foundation of the assignments is the fact that the citizen receiving the income, and the property of which it is the product, are outside of the territorial limits of the United States. These two facts, the contention is, exclude the existence of the power to tax. Or to put the contention another way, as to the existence of the power and its exercise, the person receiving the income, and the property from which he receives it, must both be within the territorial limits of the United States to be within the taxing power of the United States. The contention is not justified, and that it is not justified is the necessary deduction of recent cases. In *United States* v. *Bennett*, 232 U. S. 299, the power of the United States to tax a foreign built yacht owned and used during the taxing period outside of the

United States by a citizen domiciled in the United States was sustained. The tax passed on was imposed by a tariff act,[2] but necessarily the power does not depend upon the form by which it is exerted.

It will be observed that the case contained only one of the conditions of the present case, the *property* taxed was outside of the United States. In *United States* v. *Goelet*, 232 U. S. 293, the yacht taxed was outside of the United States but owned by a citizen of the United States who was "permanently resident and domiciled in a foreign country." It was decided that the yacht was not subject to the tax—but this as a matter of construction. Pains were taken to say that the question of power was determined "wholly irrespective" of the owner's "permanent domicile in a foreign country." And the Court put out of view the situs of the yacht. That the Court had no doubt of the power to tax was illustrated by reference to the income tax laws of prior years and their express extension to those domiciled abroad. The illustration has pertinence to the case at bar, for the case at bar is concerned with an income tax, and the power to impose it.

We may make further exposition of the national power as the case depends upon it. It was illustrated at once in *United States* v. *Bennett* by a contrast with the power of a State. It was pointed out that there were limitations upon the latter that were not on the national power. The taxing power of a State, it was decided, encountered at its borders the taxing power of other States and was limited by them. There was no such limitation, it was pointed

[2] Section 37, Tariff Act of August 5, 1909, c. 6, 36 Stat. 11, 112, provided in part as follows: "There shall be levied and collected annually on the first day of September by the collector of customs of the district nearest the residence of the managing owner, upon the use of every foreign-built yacht, pleasure-boat or vessel, not used or intended to be used for trade, now or hereafter owned or chartered for more than six months by any citizen or citizens of the United States, a sum equivalent to a tonnage tax of seven dollars per gross ton."

out, upon the national power; and the limitation upon the States affords, it was said, no ground for constructing a barrier around the United States "shutting that government off from the exertion of powers which inherently belong to it by virtue of its sovereignty."

The contention was rejected that a citizen's property without the limits of the United States derives no benefit from the United States. The contention, it was said, came from the confusion of thought in "mistaking the scope and extent of the sovereign power of the United States as a nation and its relations to its citizens and their relations to it." And that power in its scope and extent, it was decided, is based on the presumption that government by its very nature benefits the citizen and his property wherever found, and that opposition to it holds on to citizenship while it "belittles and destroys its advantages and blessings by denying the possession by government of an essential power required to make citizenship completely beneficial." In other words, the principle was declared that the government, by its very nature, benefits the citizen and his property wherever found and, therefore, has the power to make the benefit complete. Or to express it another way, the basis of the power to tax was not and cannot be made dependent upon the situs of the property in all cases, it being in or out of the United States, and was not and cannot be made dependent upon the domicile of the citizen, that being in or out of the United States, but upon his relation as citizen to the United States and the relation of the latter to him as citizen. The consequence of the relations is that the native citizen who is taxed may have domicile, and the property from which his income is derived may have situs, in a foreign country and the tax be legal—the government having power to impose the tax.

Judgment affirmed.

MR. JUSTICE MCREYNOLDS took no part in the consideration or decision of this case.

COOK *v.* TAIT, UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

No. 220. Argued April 15, 1924.—Decided May 5, 1924.

Congress has power to tax the income received by a native citizen of the United States domiciled abroad from property situated abroad. P. 54.

286 Fed. 409, affirmed.

ERROR to a judgment of the District Court, dismissing on demurrer an action to recover money paid, under protest, as income taxes.

Mr. Charles Claflin Allen, Jr., and *Mr. Charles Claflin Allen*, with whom *Mr. Frederic N. Watriss* was on the briefs, for plaintiff in error.

I. Congress has no power to impose a tax upon income received by a native citizen of the United States who was at the time when the income was received permanently resident and domiciled in the Republic of Mexico, when such income was derived solely from real and personal property permanently located at all times with-